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IN THE

District Court of the United States

FOR THE WESTERN DISTRICT OF MISSOURI.
CENTRAL DIVISION.

IN EQUITY.

No. 270

(and other pending cases 270 to 426 excepting those dismissed).

AMERICAN INSURANCE COMPANY, A CORPORATION, PLAINTIFF,

VS.

RAY B. LUCAS (SUCCESSOR IN OFFICE TO R. E. O'MALLEY, SUCCESSOR IN OFFICE TO JOSEPH B. THOMPSON), SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI, AND ROY McKITTRICK (SUCCESSOR IN OFFICE TO STRATTON SHARTEL), ATTORNEY GENERAL OF THE STATE OF MISSOURI, DEFENDANTS.

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RONALD R. MARTIN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Ronald R. Martin.

Q.2. Mr. Martin, what is your residence? A. It is in Montclair, New Jersey.

Q.3. What is your connection with the Atlas Insurance Company, Ltd.? A. United States manager and member of its local board of directors.

Q.4. What was your connection with this company in 1935 and 1936? A. The same, sir.

Q.5. You knew that a compromise of this case was effected in May of 1935, did you not? A. I know there was one, and I presume it was in May; it was about that time.

Q.6. You were familiar, were you, with the terms and provisions of that compromise agreement? A. Yes.

Q.7. You knew that a federal court decree was entered thereafter, I believe in February of 1936? A. I knew that one was about that time.

Q.8. Do you recall receiving a letter from, I believe, the Subscribers' Actuarial Committee, addressed to all of the companies setting forth the terms and provisions of that compromise? A. I undoubtedly do. I don't remember specifically about it. I can answer your last question more specifically, I just have that Missouri rate circular of February 4, 1936.

Q.9. Mr. Martin, did you have any information about a $100,000.00 fund being raised in May of 1935? A. Absolutely not, sir.

Q.10. Did your first information as to that fund come after the grand jury investigation in Kansas City? A. I never even heard a suspicion there had been such a thing until I happened to be talking to our attorney here a week ago.

Q.11. Now, I believe your office received in 1936 11 per cent remittance out of the 30 per cent fund? A. It did, sir.

Q.12. That was paid here in New York? A. It was sir.

Q.13. Then apparently your office received a letter from Mr. Schoen sometime prior to March 24, 1936, Mr. Schoen being your manager in Chicago? A. Yes, sir.

Q.14. Do you have the original of that letter of March 24, 1936? I have before me a letter which appears to be a reply to that, but I don't have the original letter. A. I doubt, sir, if I have the original letter here.

Q.15. Do you have a copy? A. I don't believe I have it with me, sir.

(A copy of a letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 120, EFM.")

Q.16. I show you Defendants' Exhibit 120, and I offer that now in evidence, which letter purports to be a copy of a letter written by a Mr. Barry, I believe it is. A. That is correct, sir.

(Which said Defendants' Exhibit 120, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Atlas Assurance Company Ltd
Original Copy Over York Branch Letter
Exhibit # 3

NEW YORK

March 24th, 1936.

COPY

Mr. E. W. Schoen, Manager,
Atlas Assurance Company Limited,
175 West Jackson Blvd.,
Chicago, Ill.

Dear Sir: Re: Missouri Impounded Premiums.

Referring to your letter of the 12th instant we beg to advise you that a representative of the Trustee in the above case turned over to us a check in the amount of $4,750.17 with the explanation that this check was a further payment on the impoundings made up to April 30th, 1935 and represented 11% of our premiums impounded to that date.

The premium figures used by the Trustee were $43,183.47, whereas in your letter of January 30th, this year, the amount that you had impounded with the State up to July 15th (which we assume represented the undeposited premium collections to April 30th, 1935) was $44,984.61 and we are wondering which of the two sets of figures are correct.

Upon instructions from the representative of the Trustee we were asked to return to the Attorneys a check in the amount of $2,159.17 representing 5% of the impoundings of $43,183.47. The check was made payable to C. R. Street, Agent, representing the Attorneys' share of this recent payment.

Both the above items have been entered in our books here as a debit and credit to Branch Remittance; the payment of $4,750.17 should be earmarked and credited to "Missouri Impounded Premiums" as a further payment on account as above stated. The amount of $2,159.17 should be earmarked and charged against "Missouri Impounded Premiums" with a notation that it represents Attorneys' fees.

Will you kindly check the above premiums quoted by the Trustee and also the amount quoted in your letter of January 30th, this year, and advise us the correct figures.

Yours very truly,

Actually a representative of Peter Hamm Estate Co.

FJB:IW

Secretary.

[redacted]

D 120 Ela

Q.17. Can you refer to the contents of that letter and testify as to the matters related in the letter? A. Yes, sir, I believe I can give you a clear cut statement as to that.

The Special Master: Before you do that, let me read this exhibit. (Said exhibit handed to the Master.)

Q.18. All right, just go ahead, Mr. Martin. A. It is to this effect, sir, that on the morning of March 23, 1936—please don't hold me down to the minutes or exact dates; I am trying to give this story—I received a telephone call from Mr. Haid. The exact conversation, of course, I don't remember, but it was to this effect; that there was a rebate of 11 per cent of $43,183.47, for which he had a check in hand, and he was sending it up to me, and as there were some unadjusted expenses, or whatever it was that he did say, that I cannot recall, that he wanted a check drawn for 5 per cent of that amount, which amounted to $2,159.17, to be issued in the name of C. R. Street, Agent. On receipt of that telephone message —this is the memorandum, sir, that I made. I have discovered it since I submitted these original papers, and I can recall calling Mr. Barry, who is our secretary in charge of financial matters, and telling him that I had agreed to do this, and that a messenger would bring this check to our office, and that we were to have ready a counter-check of $2,159.17, to deliver in the name of C. R. Street, Agent. I think, sir, that covers everything that the letter refers to, except the slight difference in the amount which has been verified and rechecked.

Q.19. I notice in the first paragraph of this letter addressed to Mr. Schoen, dated March 24, 1936, it says, "Referring to your letter of the 12th instant, we beg to advise you that a representative of the Trustee in the above case turned over to us a check in the amount of $4,750.17, with the explanation that this check was a further payment on the impoundings made up to April 30, 1935, and represented 11 per cent of our premiums impounded to that date." Who was the representative of the trustee? Was that Paul L. Haid? A. That is the only representative I know, sir.

Q.20. And I notice on the typewritten part of this letter or copy—I think it appears on the photostatic copy—a mark made there in the form of a star, and then down here appears these words, "Actually a representative of 'the powers that be.' " In whose handwriting are these

words, "Actually a representative of 'the powers that be' "? A. Frank J. Barry's.

Q.21. Who are "the powers that be"? A. I haven't the faintest idea what was in Mr. Barry's mind when he wrote that, sir.

Q.22. But Mr. Barry had put on the letter up here, a star for reference to a foot note? A. Yes.

Q.23. That is what you would interpret that to be, after the word "trustee," and then after that he had added these words, "Actually a representative of 'the powers that be' "? A. Yes.

Q.24. You understand that the representative of the trustee was Paul L. Haid? A. I do, sir.

Q.25. But you can't throw any light on Mr. Barry's notation in the letter that this representative of the trustee was "Actually a representative of 'the powers that be' "? A. Only to this extent, sir: I might say that any information that Mr. Barry got in this matter must have been from me, because there is no other contact that I ever heard of or have been aware of.

Q.26. I understand that, but do you know and can you tell us who he meant by "the powers that be"?

The Special Master: I would not pay much attention to what he said anyhow. I could conclude as well as he could, if he did not write it on there.

Senator Hollingsworth: Sir?

The Special Master: I could conclude what Mr. Barry meant just as well as he could, unless he wrote it on there or unless he told Mr. Barry to write it on there.

Senator Hollingsworth: That is true, unless the powers that be are generally known in the office of the Atlas Assurance Company, and if you know who they are, that is all I want to know.

Q.27. Do you know who "the powers that be" are? A. In the Atlas Assurance Company?

The Special Master: Or the insurance world. Is there anybody commonly referred to by that name that you know of?

A. Generally, no, sir.

Q.28. (By Senator Hollingsworth) So you don't know and you can't give us any information as to whom he meant by that notation? A. I cannot, sir.

Q.29. Mr. Barry is where? A. He is in northern New Jersey some place on vacation. He will be back in New York next Monday.

Q.30. Now, there appears to be some confusion in figures in the correspondence here, but I won't go into that. A. I think, sir, that has all been straightened out.

The Special Master: It is immaterial, isn't it?

Senator Hollingsworth: I think so, and I won't go into it.

The Special Master: We do not care anything about that slight discrepancy in the figures. The letter is simply confirming the first figure, of $43,000.00.

Q.31. When Mr. Haid called on you for the 5 per cent, as I understand he did— A. (Interrupting) Yes, sir.

Q.32. (Continuing) —just tell as fully as you can what he said about what it was for. A. First, sir, the conversation was a short one, and I can't report his conversation word for word, but the impression remains in my mind something about that, "Ronnie," which is the name he usually calls me over the telephone, "I have a check in hand for a certain amount representing 11 per cent of the impounded premiums which is due to you and because of"—I don't know whether he said, "additional expenses" or what he did say actually—"there is 5 per cent of this amount on which that is based, to be returned in the form of a check addressed to Mr. C. R. Street, Agent."

Q.33. You knew that 30 per cent had been allocated for the payment of expenses? A. I have heard of the 30 per cent.

Q.34. Did you understand from Mr. Haid that some unanticipated expenses had accrued? A. I question, sir, whether I even thought that deeply on the subject. That is a matter that has been running on, even before I came to New York.

Q.35. You mean you had no understanding at all as to what he meant other than that it was for expenses? A. I mean that his conversation was quite intelligible and appeared to me as a clear cut statement, that he had this amount in hand that represented 11 per cent, and he wanted the 5 per cent drawn back. The natural conclusion in my mind being, I presume at the time (I can only guess now), is that the check was drawn to our order, that we should only get 11 per cent and giving 5 per cent back. Why it was done in that fashion, I didn't know at that time, and I haven't learned since, really.

Q.36. Did he tell you to whom to make the check? A. Yes, sir.

Q.37. That was C. R. Street, Agent? A. There is no doubt of that, because a memorandum in my own handwriting of that date is here, which shows that quite clearly, "C. R. Street, Agent."

Q.38. Do you have any impression as to why that should have been done or why it should have been made to C. R. Street, Agent? A. My impression would be a very natural one, that Mr. Street could be in close collaboration with the attorneys, Folonie's firm, all through the years in this matter, and it never came in my mind to question why it should be made to Mr. Street.

Q.39. The fact that the trustees had charge of the disbursement of funds for disbursement didn't occur to you at that time? A. It did not, sir.

Q.40. That is the extent of your knowledge in this matter? A. It is, sir.

Senator Hollingsworth: That is all.

(Witness excused.)

FRED A. HUBBARD, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Fred A. Hubbard.

Q.2. Mr. Hubbard, what was your connection with the Globe & Rutgers in 1935 and 1936? A. President.

Q.3. You are not now connected with the Globe & Rutgers? A. No.

Q.4. When did you sever your connection with that company? A. September of 1938.

Q.5. What was your connection with Globe & Rutgers in 1935 and 1936? A. I was president.

Q.6. I hand you Defendants' Exhibit 100, which has heretofore been introduced in evidence, and call your attention to that memorandum there. Does that refresh your recollection? A. Yes, sir.

Q.7. Now, it appears from this memorandum made by Mr. VanHorne that on March 23, 1936, Mr. Haid had called to see you and left a check with you from R. J. Folonie and C. R. Street, as Trustees? A. Yes, sir.

Q.8. He came to your office, did he? A. Yes, sir.

Q.9. Where is your office located, or where was it located at that time? A. 111 Williams Street.

Q.10. Where was Mr. Haid's office located at that time? A. I think here; I am not certain.

Q.11. How far is 111 Williams Street from this place? A. About three blocks.

Q.12. What did Mr. Haid say to you when he came there? A. Well, my recollection is that he said, "Well, Fred, I have got a check here for you for"—whatever it was—"$9,000.00," and he handed me the check, and he said, "I want a check to C. R. Street, as agent, for forty some hundred dollars."

Q.13. Did he hand you the check which was, as I understand, 11 per cent of the impounded premiums? A. I think he did, either to myself—I am not sure whether Mr. VanHorne was in the room or not.

Q.14. You noted that a check came from R. J. Folonie and C. R. Street, Trustees? A. I don't think I noted it.

Q.15. Would the memorandum refresh your memory as to that? A. I would say that was a correct statement.

Q.16. You knew they were the trustees in charge of the 30 per cent impounded premium fund? A. I really knew very little about it, for this reason: I was out of the business from 1923 until the first of 1933, and the Globe & Rutgers had been in rehabilitation. It had been out of business for about eighteen months, and this particular matter was really what we called a rehabilitation matter. It was in connection with the old estate of the Globe & Rutgers, and not with the new operations, and I really knew nothing about the Missouri situation, because I hadn't been in it at the time.

Q.17. Did the fact that the 5 per cent check which you were called upon to give to Mr. Haid was made to C. R. Street as agent, strike you as being in any way peculiar or out of line? A. Not at all.

Q.18. You had no prior knowledge as to this transaction? A. None whatever.

Q.19. Have you related all of the conversation Mr. Haid had with you? A. I would say so, yes.

Q.20. Did you deliver the check to Mr. Haid personally or cause it to be delivered that day? A. Yes, either delivered it or caused it to be delivered.

Q.21. Did he tell you the nature of the expense that the 5 per cent check represented? A. He did not.

Q.22. And you didn't know? A. I didn't know.

Q.23. You made no further inquiry? A. No.

Q.24. And when you made it to C. R. Street as agent, you intended to constitute him as your agent for the purpose of disposing of that money? A. I really—I don't think I gave any thought to it at all. I simply made it the way Mr. Haid asked. I don't think I thought about it at all.

The Special Master: The Globe & Rutgers became impaired and went into the hands of the Superintendent of Insurance while this rate litigation was going on?

A. Yes, in March, 1933, I think.

The Special Master: Partly on account of the depression in the value of its securities?

A. Yes.

The Special Master: And for a long time it was not permitted to write insurance at all?

A. For about eighteen months.

The Special Master: Then the market got better, and its securities were more valuable?

A. Well, that wasn't exactly it. They reorganized under the superintendent.

The Special Master: Yes, but meanwhile they got to the place where they could actually put up reserve?

A. They had to put in more money to do that. They had a reorganization.

The Special Master: Then when that happened, the Superintendent of Insurance required Mr. Jameson, the former president, to go out?

A. Yes, sir.

The Special Master: That is what brought you in?

A. Yes.

The Special Master: All right.

Q.25. (By Senator Hollingsworth) Now, I want to refer, Mr. Hubbard, to the Hanover Fire Insurance Company connection with this matter under inquiry now. A. Yes.

Q.26. When did you go with Hanover? A. In September, 1938, or October 1st, 1938.

Q.27. Do you know who was in charge of the operation of the company in 1935 and 1936? A. Mr. Higley was president at that time and Mr. Montgomery Clark was vice-president.

Q.28. Is Mr. Montgomery Clark living? A. No.

Q.29. Is Mr. Higley living? A. No.

Q.30. Who was Edward L. Coffill? A. I think at that time he was assistant secretary. He is now secretary.

Q.31. He is now secretary? A. Yes.

Q.32. Where is he located, here? A. Yes, across the street.

(Documents, handed to the reporter, were maked for identification as "Defendants' Exhibits 121 to 135, EFM," both inclusive.)

Q.33. Do you have any information or knowledge at all concerning this matter, insofar as the Hanover was connected with it prior to the time you went to Hanover? A. No.

Q.34. Did you talk to any of the executives or learn anything of it? A. No, sir.

Senator Hollingsworth: Mr. Berger, will it be admitted that Defendants' Exhibits 121 to 135, inclusive, constitute the records of the Hanover Company insofar as they relate to the matter now under inquiry?

Mr. Berger: As far as we know, they do. The letter of transmittal precedes all of those and so states.

Senator Hollingsworth: These records are the records of the company.

Mr. Murphy: Photostats of their records.

Mr. Berger: The records furnished by the Hanover, Western Department, furnished to the United States District Attorney.

Senator Hollingsworth: We offer those exhibits in evidence.

(Which said Defendants' Exhibits 121 to 135, both inclusive—excepting Exhibit 131, which was inadvertently omitted in numbering, so that there is no Exhibit 131—so offered in evidence, having been previously duly marked, are in words and figures as follows:)

THE HANOVER FIRE INSURANCE COMPANY

111 John Street

No. 14040

PAY TO THE ORDER OF Rudy Folonie Agent NEW YORK MAR 23 1936 19

***FORTY ONE HUNDRED SIXTEEN AND 48/100 DOLLARS $ 4116.48/100

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK
PINE STREET CORNER OF NASSAU

Pay to the order of
C. R. STREET
Rudy Folonie Agent

FOR DEPOSIT WITH
CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO
5121 5424
CHARLES R. STREET
C.R. STREET

PAID THROUGH CHICAGO CLEARING HOUSE

D 121

March 23, 1936

Mr. C. R. Street, Trustee,
1300 - 310 So. Michigan Ave.,
Chicago, Illinois.

Dear Sir:

This will acknowledge receipt of check for $9,056.26, representing 11 percent of premiums of this company impounded in the State of Missouri.

We are enclosing herewith our check for $4,116.48 payable to R. J. Polonie, Agent, on account of expense.

Yours very truly,

Vice President.

5:MC
Enc.

ER SAMMONS, Secretary
GILBERT, Secretary
CHARLES W HIGLEY, President
MONTGOMERY CLARK, Vice President
H. T. GIBERSON, Treasurer
EDWARD L. COFFILL, Asst Sec'y

The Hanover Fire Insurance Co.

111 John Street,
New York.

C/o The Offices again 3/10/39

March 28, 1936

Mr. V. M. C. Nelson,
c/o The Hanover Fire Insurance Co.,
1105 Insurance Exchange,
Chicago, Illinois.

Dear Mr. Nelson:

We have received a check for $9,056.26 signed by C. R. Street and R. J. Folonie as trustees, being 11 percent of $82,329.66 account of Missouri impounded premiums.

In return, we have drawn a check for $4,116.48 to the order of R. J. Folonie, Agent, being 5% of $82,329.66 account of Missouri impounded premiums, which is chargeable to legal expense.

We are treating the $9,056.26 as a remittance from your office and the $4,116.48 as a remittance to your office. Please show these items on your cash statement for March in order that our records may be concurrent.

Yours very truly,

Edward L. Coffill
Assistant Secretary.

ELC:MC

D/123

Dr Mo. Impd Premiums 9056.26
Cr Home Office 9056.26
3/28/36 Dr Home Office 4116.48
Cr Mo. Impd Premiums 4116.48

CHARLES W. HIGLEY, President and General Agent W. H. MAXWELL, Asst. General Agent JOHN BYRNE, Asst. General Agent

The Hanover Fire Insurance Co.
of New York

Western Department
1005 Insurance Exchange,
Chicago, Ill.

Mar. 25, 1936

Mr. Edward L. Coffill, Ass't. Sec'y.,
Hanover Fire Insurance Co.,
P. O. Box 1220,
City Hall Station,
New York, N. Y.

Re: Missouri Impounded Premium

Dear Mr. Coffill:

We thank you for your advices of March 23. Apparently these settlements as they come along will be made direct to the Home Office. We do not know where the trustees get the figure of --. $82,329.66
for which they sent you 11%, but this, no doubt, will be explained later on.

We will follow your suggestion, and credit Missouri impounded premiums - 9,066.28
and charge the Home Office with the same amount as a remittance from the Western Department. We shall also credit as a remittance from the Home Office - 4,116.48
that you have paid to R. J. Polonie, agent for legal expense, which latter figure will be charged on our books as Missouri legal expense. We shall consider these items as suggested by you as cash entries for the month of March. If we all live long enough we might see an end to this particular case.

For your general information, we are arranging in view of the remittance we recently received from the Home Office to pay the commission on impounded premiums, which the companies were forced to arrange for on a 100% basis, although in the end we will receive 80¢ back on part of the impounded premiums, and 66 2/3¢ back on the balance, but a concerted action by the companies allows agents full amount of the commission, so our commission ratio for the time being will be way out of proportion, as you can readily understand.

Yours very truly,

Charles W. Higley General Agent

By [signature] Accounting Dept.

VW/C

14

Defendants' Exhibit No. D 125 is page 313 of the records of THE HANOVER FIRE INSURANCE COMPANY "Agency Remittances Month of March 1936," which said Exhibit does not contain any entries pertaining to the State of Missouri.

Defendants' Exhibit No. D 126 is page 314 of the records of the same company, "Agency Remittances Month of March 1936," which includes, among other entries, the following under date of March 23rd:

"Western Dept Agency Credit Cash $9,056.26
Agency Cash Paid $4,116.48"

(being amounts referred to in Defendants' Exhibit No. D 123).

Defendants' Exhibits Nos. D 127, D 128, D 129, D 130, and D 132 are photostatic copies of pages of the General Cash Book of the Western Department and Defendants' Exhibit No. D 133 is page 23 from the Ledger account of the Western Department entitled "Home Office," and Exhibit No. D 135 is the Western Department report for the month of March, 1936. These Exhibits all show receipt by the New York Office of $9,056.26 and the payment of $4,116.48 as referred to in Exhibit No. D 123 and its transfer to the Western Department of THE HANOVER FIRE INSURANCE COMPANY.

Defendants' Exhibit No. D 134 is Ledger page, same company, showing a charge to legal expense in March, 1936, of $4,116.48.

Senator Hollingsworth: I don't think of anything further.

The Special Master: That is as far as you are going to get, if they are all dead.

Senator Hollingsworth: That is all.

(Witness excused.)

OSWALD TREGASKIS, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name please. A. Oswald Tregaskis.

Q.2. You reside here in New York, Mr. Tregaskis? A. Yes, sir.

Q.3. What is your connection with the Sun Insurance Office group? A. I am manager of the United States Branch of the Sun Insurance Office, and president of the Patriotic Insurance Company.

Q.4. What is the relation between the Patriotic and the Sun Insurance Office? A. The Patriotic Insurance Company is owned by the Sun indirectly, by the majority stockholders of the Patriotic Assurance Company of Dublin, which, in turn, is owned by the Sun Insurance Office.

The Special Master: The other company is an American affiliate, incorporated in the United States?

A. That is right, the Patriotic Insurance Company of America.

Q.5. What was your connection with these companies in 1935 and 1936? A. The same; I held the same positions.

Q.6. Did you know that a compromise agreement of the Missouri rate litigation was executed in May of 1935? A. Well, I don't recall the date, but I know a compromise agreement was effected.

Q.7. Did you know that a court decree was rendered in the federal court in the early part of 1936? A. Yes.

Q.8. Substantially carrying out that compromise agreement? A. Yes.

Q.9. Did you receive a letter from the Subscribers' Actuarial Committee setting forth the terms of the decree? A. Yes.

Q.10. You knew that 30 per cent was allocated to Folonie and Street as Trustees, for the purpose of payment of expenses, did you not? A. Yes.

Q.11. In regard to the compromise of 1935, which records show was made in May, May 18, 1935, did you have any information at that time or about that time as to a fund of $100,000.00 being raised for any purpose? A. No, sir.

Q.12. You have since heard of such a fund? A. Yes, I heard it from Mr. Murphy the other day.

Q.13. Prior to that time you had never heard of it? A. Never.

Q.14. Now, after the federal court decree and the creation of the trust, I believe you received a remittance from the 30 per cent fund in the sum of 11 per cent? A. Correct.

Q.15. From whom did you receive that? A. I had a call from Mr. Erskine of Mr. Haid's office. He handed the check to me.

Q.16. Did Mr. Erskine come to your office personally? A. Yes.

Q.17. And gave you 11 per cent check? A. Yes, sir.

Q.18. Was that signed by the trustees? A. I haven't any record or recollection of that.

Q.19. At the time Mr. Erskine delivered you that check, what did he tell you? A. To the best of my recollection, he told me that he was commissioned as a messenger to deliver this check for 11 per cent to the companies domiciled in New York, and I understood it came from Mr. Folonie's office.

Q.20. What else did he say to you in regard to the matter? A. He also requested that we remit to him 5 per cent back which was required for expenses.

Q.21. What expenses did he tell you they were? A. No detail was given. I asked him if there was any detail about it and he said, "No." He was simply a messenger.

Q.22. You asked him if he knew anything about it? A. I said, was there any detail he could give me in regard to the transaction, and he said, no, he was simply a messenger to deliver the 11 per cent check and to request a check for 5 per cent.

Q.23. Did he tell you who had sent him? A. I understood that it was from Mr. Folonie.

Q.24. And you understood that he was a messenger from Mr. Folonie's office in connection with it? A. Yes.

Q.25. And told you that he couldn't give you any details in regard to the expense at all? A. That is so, yes.

Q.26. Did he tell you to whom the check should be drawn? A. Yes, sir.

Q.27. Did you thereupon make a requisition for the check? A. I instructed our accountant so to do.

Q.28. Did you give the accountant the necessary information to write the requisition? A. I did.

(Said requisition, handed to the reporter, was marked for identification as "Defendants' Exhibit 136, EFM.")

Q.29. I hand you Defendants' Exhibit 136, which I now introduce in evidence. Please state if that is the requisition. A. That is a photostat of the original requisition.

(Which said Defendants' Exhibit 136, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Patriotic Insurance Company

REQUISITION FOR CHECK

DATE MAR 23 1936 No 3008 Sng.

CHECK TO THE ORDER OF R.J. Tobnie Agent

FOR $ 249 31/3

IN PAYMENT OF Expense Insurance Litigation

CHARGE TO Employees Welfare DEPARTMENT

REQUISITION MADE BY

DEPARTMENTAL APPROVAL

EXECUTIVE APPROVAL

REMARKS:

19

3/36

Q.30. I note that that calls for a check to the order of R. J. Folonie, Agent? A. Yes, sir.

(A photostatic copy of a check, handed to the reporter, was marked for identification as "Defendants' Exhibit 137, EFM.")

Q.31. I show you Defendants' Exhibit 137. Please state if that is a photostatic copy of the check that was issued under the requisition? A. It is.

Q.32. That check is dated March 23, 1936? A. Correct.

Q.33. And it is payable to R. J. Folonie, Agent? A. Yes.

Q.34. It doesn't show on its face what it was for? A. No.

Q.35. Now, will you look at the check, and I believe it shows that it was not paid until November 17, 1936.

The Special Master: And it was issued when?

Senator Hollingsworth: March 23, 1936.

A. Yes, that is so.

Q.36. Do you know why that check was not cleared through the banks until November 17, 1936? A. I have no idea.

Q.37. Was it called to your attention at any time that that check was still out? A. No, it was not.

Q.38. You never heard of it and never knew of that unusual length of time? A. No, sir.

Q.39. Had you ever heard of it before I called your attention to it? A. Mr. Murphy mentioned it the other day to me. I hadn't heard of it until then.

Q.40. I call your attention to the endorsement appearing on the back of it; part of it apparently is your record in order to make the endorsement of the receipt. A. Yes.

Q.41. Then under that, "Expense, Missouri Litigation," is that a part— A. (Interrupting) That is part of our endorsement.

Q.42. Then under that is typewritten, "Pay to the order of C. R. Street," then signed, "R. J. Folonie, Agent." A. That is not affected by the Sun Insurance Company office.

Q.43. In other words, that is an endorsement placed on there ostensibly by R. J. Folonie, Agent, after it was issued out of your office? A. I would assume so.

Q.44. Do you have any explanation as to why your check payable to R. J. Folonie was afterwards endorsed,

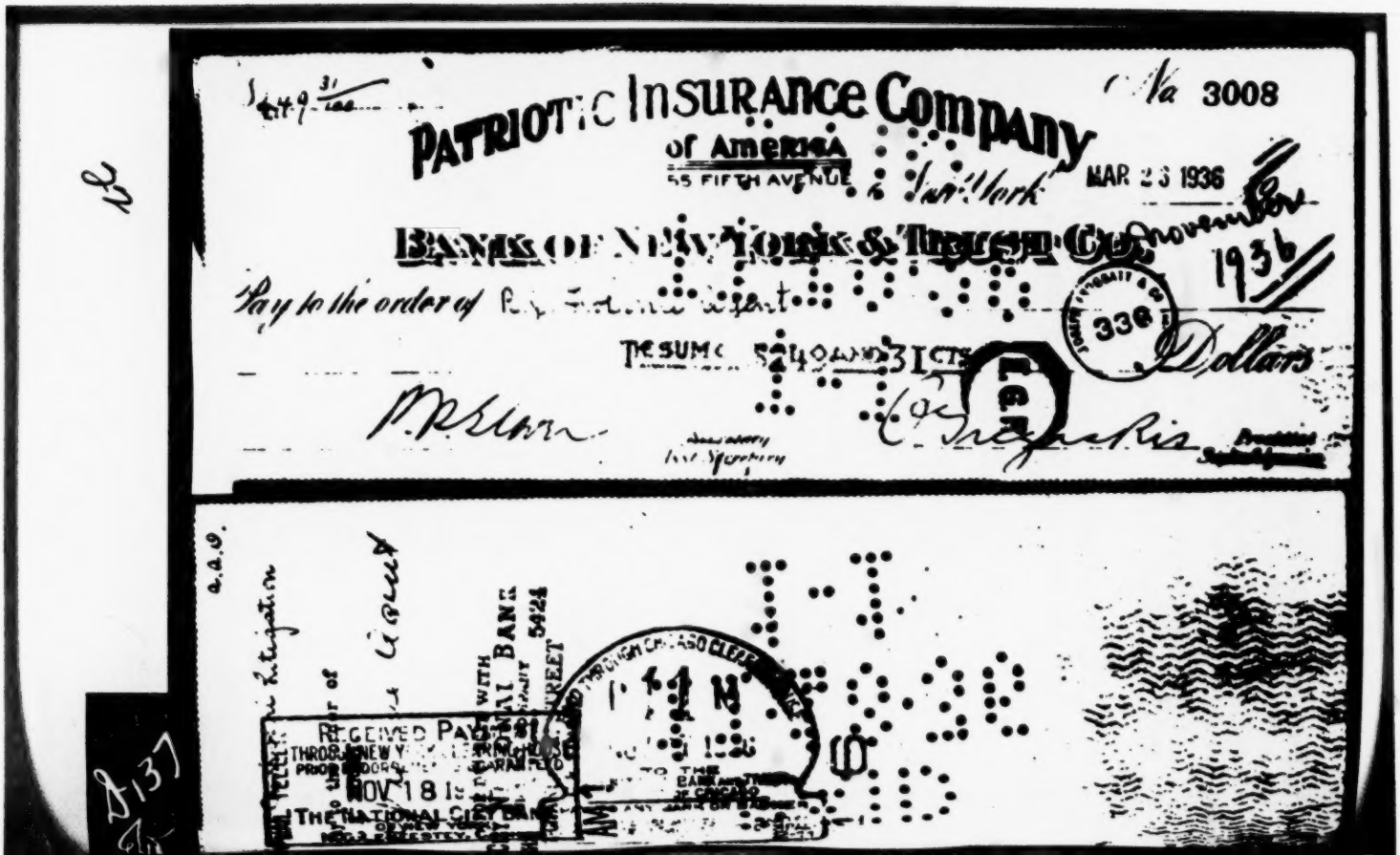
"Pay to the order of C. R. Street," signed "R. J. Folonie, Agent"? A. No, I have no explanation.

Q.45. Had you ever noticed that before? A. No, I had not.

(Whereupon, discussion was had off the record.)

Senator Hollingsworth: I offer in evidence Exhibit 137.

(Which said Defendants' Exhibit 137, so offered in evidence, having been previously duly marked, is in words and figures as follows:)



PATRIOTIC Insurance Company
of America
55 FIFTH AVENUE, New York

No 3008

MAR 23 1936

BANK OF NEW YORK & TRUST CO

November 1936

Pay to the order of

THE SUM

Dollars

RECEIVED PAYMENT
NOV 18

THE NATIONAL CITY BANK

(A requisition, handed to the reporter, was marked for identification as "Defendants' Exhibit 138, EFM.")

Q.46. I show you Defendants' Exhibit 138. Do you recognize that as the requisition? A. Yes. The "Agent" is very faint. Yes, that is it. That is the requisition.

Q.47. Can you tell from looking at that whether the word "Agent" was written on there at the time you made up the requisition or afterwards? A. I would say it was made at the time, because my recollection is that that was the way we were asked to draw the check.

Q.48. You had an independent recollection at that time? A. Yes, I had an independent recollection at that time.

Q.49. Then the check was issued to R. J. Folonie, Agent? A. Yes.

Q.50. At that time did you intend for R. J. Folonie as Agent to endorse a check over that you gave him to C. R. Street? A. No, sir.

Q.51. You constituted Folonie as your agent? A. Yes.

Q.52. To whom did you understand the money was going? A. Well, to Folonie, on behalf of our united interests.

Q.53. I know, but going to him to be paid to whom? You wrote it to R. J. Folonie, Agent. You meant by that that he was your agent, didn't you? A. Yes.

Q.54. All right. To whom was he to pay this money? A. To whom it was due. I assumed that it was for legal expenses incurred.

Q.55. Well, you didn't understand that C. R. Street was a lawyer, did you? A. No, sir.

Q.56. And when the check came back to you, to your office, it was endorsed by Folonie, Agent, over to C. R. Street? A. Yes.

The Special Master: When did you first see that endorsement?

A. I think I saw it the other day when I was—

The Special Master: The reason I am asking you, ordinarily an executive does not look at the endorsements on canceled checks, not unless he has some reason to do so.

A. I issue many hundreds of check a day; it wouldn't pass through my hands.

Q.57. Was it called to your attention before Mr. Murphy talked to you about it several days ago? A. No, sir.

Q.58. You never knew anything about it prior to that time? A. I never knew anything about it prior to that time.

Q.59. I believe you stated that you never knew before you talked to Mr. Murphy the other day that this check had not cleared until November of 1936? A. That is so.

Q.60. Would anyone in your office, your accountants or auditors, ordinarily note an outstanding check from March, 1936, until November of 1936? A. Yes, it would be noticed because it would appear in bank reconcilement statements. There is nothing unusual in checks being outstanding for a long period of time.

Q.61. For that period of time? A. Oh, yes, some even longer.

Q.62. Checks for that amount? A. No, I would say that was an unusually large amount. There might be an estate tied up in case of a loss payment or something of that kind where it wouldn't be cleared for so long.

Q.63. Do you know now whether your office directed any inquiry to find out what had become of this check? A. I have no knowledge of that. I think if there had been any such inquiry instituted, I would have heard of it.

Senator Hollingsworth: I offer in evidence Exhibit 138.

(Which said Defendants' Exhibit 138, so offered in evidence, having been previously duly marked, is in words and figure as follows:)

2138

Sun Insurance Office, Ltd.

REQUISITION FOR CHECK

DATE MAR

NO. 4210 March

CHECK TO THE ORDER OF R J Folonis Agent

FOR $ 2591.06

IN PAYMENT OF Expense Missouri Litigation

CHARGE TO Suspense Western DEPARTMENT

REQUISITION MADE BY

DEPARTMENTAL APPROVAL

EXECUTIVE APPROVAL

REMARKS:

25

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.64. Then as far as your Sun Insurance Office is concerned, and the Patriotic Insurance Company, the two checks of March 23, 1936, aggregating $3,800.00 certainly didn't go to Mr. Pendergast or Mr. O'Malley or anybody else who got their money in the spring of 1936, did they? A. No, sir.

XQ.65. So none of your money went to any improper place, did it? A. No, sir.

Mr. Bullitt: So far as you are concerned. All right, that is all.

Re-Direct Examination by Senator Hollingsworth.

RDQ.66. You don't know for what purpose Mr. Street used it, do you? A. I have no idea.

RDQ.67. You thought when you issued it it would be for payment of legal fees then due, didn't you? A. Yes.

RDQ.68. Now, I call your attention to another requisition which has been marked "Defendants' Exhibit 136," and direct your attention especially to the words "R. J. Folonie," and the word "Agent" after it. Isn't that a different writing with a different pencil or a different pen, or whatever it was written with? A. No. I recognize that writing; it is our accountant's writing. That is his initial, and they are both in the same handwriting.

RDQ.69. You think it was written at the same time? A. I am convinced of that. I think that the likeness is due to it having been blotted immediately.

RDQ.70. Well, this would be written afterwards, wouldn't it?

Mr. Bullitt: "This" doesn't show in the record. You have stated, "This shows written." You must say what you mean.

RDQ.71. (By Senator Hollingsworth) Well, I mean, "In payment of expense, Missouri Litigation,"—

Mr. Bullitt: Written after that.

RDQ.72. Would be written after the word "Agent" if it was written in ordinary course

The Special Master: You are talking about the fact that the word "Agent" is lighter than the rest of it?

Senator Hollingsworth: That is right.

Mr. Bullitt: What you mean is you think the word "Agent" may have been written in after the words "Expenses of Litigation"?

Senator Hollingsworth: You are asking what I think? I doubt if that would be competent. I wouldn't mind telling you off the record.

Mr. Bullitt: No, what was your question?

Senator Hollingsworth: I asked him—

The Special Master: Did he believe that that was written at the same time, and he said he believed it was.

A. That is because of my independent recollection, that that was the way it was requisitioned.

RDQ.73. I show you Defendants' Exhibit No. 137, and that appears to be the portion of the Patriotic Insurance Company's contribution to the 5 per cent? A. Yes.

RDQ.74. $249.31, as I read it? A. That is so.

RDQ.75. That was issued also to R. J. Folonie Agent, was it not? A. Yes.

RDQ.76. And bears the same endorsement, does it not, as the check issued by the Sun, "Pay to the order of C. R. Street"? A. That is so.

RDQ.77. "R. J. Folonie, Agent"? A. Yes.

RDQ.78. I call your attention to the fact that the stamp shows that it was not cleared until November 17, 1936. A. That is correct.

RDQ.79. You have no explanation to make of that? A. I have not.

The Special Master: Between November and what?

A. To clear up this point about the possibility of the word "Agent" having been put in at a different time, I will mention that under our office procedure, the cashier is unable to draw a check until receipt of a requisition. The check was drawn "R. J. Folonie, Agent," in accord with the requisition; the check was drawn the same way.

RDQ.80. I follow that. A. And the cashier must have had that requisition in that form to draw that requisition in that way.

Senator Hollingsworth: I agree with you, and I think that is all.

(Witness excused.)

C. A. SIEDEL, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. Your name is S. A. Siedel? A. That is right.

Q.2. What connection did you have with the Stuyvesant Insurance Company in the years 1935 and 1936? A. Until August, 1935, as assistant secretary, and after that I have been secretary.

Q.3. During all of that period of time you were either assistant secretary or secretary? A. That is right.

Q.4. Did you know of the so-called Missouri litigation during that period? A. Yes.

Q.5. Your company and some 136 other companies had suits pending in Missouri over rates? A. That is right.

Q.6. Who handled this Missouri litigation for your company? A. I handled practically all of it.

The Special Master: Who?

A. I did.

Q.7. You handled it insofar as any— A. (Interrupting) All correspondence was turned over to me.

Q.8. That is it. You handled it insofar as any official of your company had anything to do with it? A. That is it.

Q.9. But did you have direct contact with Mr. Folonie and other attorneys? A. I never heard of Mr. Folonie.

Q.10. Then who was in charge of this litigation for all of the insurance companies involved in that federal litigation? A. We followed only the Subscribers' Actuarial Bureau in this regard, and never dug underneath the surface. We are a small company.

Q.11. In other words, the Subscribers' Actuarial Committee handled the litigation for you? A. That is right.

The Special Master: That was the Bureau?

A. The Subscribers' Actuarial Committee is the proper name.

Q.12. And any expenses paid before May, 1935, by your company were paid through the Missouri Inspection Bureau? A. Right.

Q.13. Paid by your company, is that true? A. Yes.

The Special Master: Well, he didn't answer. Do you know whether that is true?

A. I am not certain whether the checks were drawn to the Missouri Inspection Bureau or the Subscribers' Actuarial Bureau at the present time.

Q.14. One or the other? A. They are either one or the other.

Q.15. Was any particular member of the Subscribers' Actuarial Committee actually in charge of this litigation? A. That I don't know.

Q.16. Have you heard that Mr. Street, the chairman at that time, really handled the litigation? A. Yes, I have.

Q.17. And he was handling it as agent for the insurance companies? A. That is right.

Q.18. Including your company? A. Right.

Mr. Bullitt: He said he had heard that.

Mr. Holman: No, I didn't say that as to the last question.

Mr. Bullitt: Read me that question and see what he said. He said he had heard it. He didn't say it was so. He said he heard it. (Question read.)

Q.19. (By Mr. Holman) Do you know that he was handling— A. (Interrupting) I do now, but I am not certain that I knew then, that I was positive at that time.

Q.20. You never objected to the person or persons who were handling it? A. No, we didn't.

Q.21. It was entirely satisfactory to you? A. Yes.

Q.22. Whoever it may have been? A. Yes.

Q.23. But it was your belief at that time that Street was handling it? A. That is right.

Q.24. Do you know in that litigation that a settlement agreement was entered into in May, 1935? A. Yes, we had, I think, a letter from the Subscribers' Actuarial Bureau.

Q.25. That letter came out in June, or somewhere along about that time, 1935? A. I don't know the date.

Q.26. What was your answer? A. I don't know the date.

Q.27. Well, you received a letter from the Missouri Inspection Bureau about May or June, 1935, didn't you? A. We may have. I don't recall that. I don't recall any before 1936.

Q.28. At any rate, along about that time you became advised that a settlement agreement had been entered into? A. Yes, sir.

Q.29. You knew, in a general way at least, the terms of that agreement, did you not? A. Yes, we did.

Q.30. And that was briefly, that the policyholders would get 20 per cent, the companies would immediately get 50 per cent, and 30 per cent would be turned over to trustees for the companies to pay expenses? A. That is right.

Q.31. And any part not used for expenses would be returned to the companies? A. Yes, sir.

Q.32. That is true? A. That is what we understood.

Q.33. That is the way you understood it. Now, your knowledge, you say, came from a letter you received? A. That is right.

Q.34. Did you discuss this situation with other insurance executives in New York? A. No, we didn't. We may have discussed it among our own executives in the office, but as a rule we don't stick Stuyvesant matters out to other executives.

Q.35. Did you attend a meeting held in this office in May, 1935? A. No, I don't think I did.

Q.36. Relating to this insurance settlement? A. I don't think I did.

Q.37. Do you know whether any member or any representatives of your company attended such a meeting? A. I don't think we were represented at that time.

Q.38. This settlement agreement that you have outlined, was that satisfactory to your company? A. Well, we just took that as a matter of course.

Q.39. That is, you made no objection? A. We made no objection.

Q.40. To what your agents had done for you? A. That is right.

Q.41. Therefore, you were willing that that be done? A. Yes.

Q.42. Whether it was satisfactory or not? A. That is right.

(A check, handed to the reporter, was marked for identification as "Defendants' Exhibit 139, EFM.")

Q.43. I hand you Defendants' Exhibit 139, which I now offer in evidence, and ask you to state what that is. A. That is a check that we drew at the request of Mr. Haid.

(Which said Defendants' Exhibit 139, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

PREMIUM ACCOUNT

The Continental Insurance Company
NEW YORK

No. 6425

MAY 23 1936 1929

Chatham Phenix National Bank and Trust Co.
100 BROADWAY, NEW YORK, N.Y.
1-30

Pay to the order of C. A. Strut

One thousand one seventy-one and 41/100 Dollars

C. A. Strut Die Agt.

Countersigned

Q.44. Just how did Mr. Haid request that you draw that check? A. He called me on the phone and stated that we were to get 11 per cent back, and that we were to return 5 per cent of that as legal expenses.

Q.45. Five percent of what? A. Five percent of the—

Q.46. (Interrupting) Total impounded premiums? A. Right.

Q.47. You were to receive 11 per cent of the total impounded premiums, and return a check for 5 per cent? A. 5 per cent.

Q.48. Did you ask him for what reason they wanted that money? A. No, I didn't, and I think he stated at the time it was expenses, and we so charged it in our records.

Q.49. What kind of expenses did he say? A. We would naturally charge it off to legal expenses.

Q.50. You would naturally do that? Did he tell you it was for legal expenses? A. I think he did.

Q.51. But you are not certain about that? A. I don't recall that.

Q.52. Did you ask him what type of expenses it was for? A. No, I didn't.

Q.53. Didn't it strike you as unusual that he would be asking for a check for expenses when you knew that the trustees had 30 per cent of the total impounded premiums to pay expenses? A. Well, we didn't, for the simple reason that we had withdrawn from the state in 1933, and all refunds that we received at that time we more or less took as a salvage on an asset that we considered—

Q.54. (Interrupting) Yes, but you testified a minute ago that you knew that the trustees held 30 per cent of the total impounded premiums with which to pay expenses. Now, didn't it strike you as unusual that they would pay you 11 per cent of that amount, or 11 per cent of the total impounded premiums, which was out of that trust fund, and ask you for another check back to pay expenses? A. Not unusual, no.

Q.55. Can you think of any reason now why they would do that? A. Possibly not.

Q.56. Well, don't you consider these things when you are requested to pay out money? A. No, if we turn over any litigation to a committee, we follow that committee without argument.

Q.57. Did Mr. Haid ask you whom to make the check payable to? A. Yes, he did.

Q.58. Or tell you, I mean? A. He did.

Q.59. And did you follow his instructions? A. We did.

Q.60. To whom did he say it should be made payable? A. C. R. Street.

Q.61. That was all he said? A. That is right.

Q.62. He didn't say "C. R. Street, Agent?" A. No, our check is not made out to C. R. Street, Agent.

Q.63. Didn't you think it strange that he not be designated in some way, in some official capacity? A. Well, we knew he was attorney for us in that regard.

Q.64. You mean an agent for you? A. That is right.

Q.65. He wasn't an attorney? A. Well, he was an agent for the attorneys.

Q.66. Well, he was an agent for your companies, wasn't he? A. Yes.

Q.67. You knew that, so, therefore, you didn't put it on the check? A. We didn't question the matter. The request wasn't made, as I recall it, to designate him as agent on the check.

Q.68. Did you pass on whether or not this money would be paid or did some other executive have something to say? A. No, I requested the accountant to draw the check.

Q.69. It is your duty, as an officer of the company, to try to keep down expenses and handle things in a businesslike way, isn't it? A. It certainly is.

Q.70. Didn't you give some thought to this proposition as to whether you should pay out this money just because Paul Haid told you to? A. No.

Q.71. Do you ordinarily pay out money without knowing what it is going for? A. No.

Q.72. Why didn't you question him as to just what this money was needed for? A. We took his word that this was legal expenses.

Q.73. Let me ask you this: wasn't this the first time in all of this litigation that you were called upon directly to pay out money for expenses, I mean, directly by any individual or any committee, other than the Actuarial Committee? A. Yes, it may have been.

Q.74. In other words, heretofore it had been done by assessment? A. That is right.

Q.75. In the regular course of business, just as all expenses of the Bureau are paid? A. That is right.

Q.76. In other words, the assessment would not only include this litigation, but other expenses heretofore? A. That is right.

Q.77. Bearing that in mind, didn't it occur to you that this was an unusual way to go about financing this litigation? A. Well, we didn't recall that at that time. We didn't think it was.

Q.78. Didn't it occur to you that it would have been simpler to have merely paid you 6 per cent instead of paying you 11 per cent and requesting 5 per cent back? A. It possibly would have been simpler.

Q.79. But didn't you think about those things? Didn't those things go through your mind at that time? A. No, they didn't.

Q.80. In other words, he merely asked you for the money and you paid it without question? A. That is right, and you will find that most of the smaller companies do exactly the same.

Q.81. Was Mr. Haid a member of the Subscribers' Actuarial Committee? A. Not that I know of.

Q.82. Did you know why he should call you up about this? A. Only that we were under the impression that they were representing the Subscribers' Actuarial Bureau in New York.

Q.83. Oh, that Haid's office was representing the Bureau in New york? A. That is right.

Q.84. Didn't you know that Mr. Koeckert in New York was a member of that committee? A. No, I didn't.

Q.85. So you paid it without question? A. That is right.

Q.86. Because you felt that these poeple were representing you in this litigation? A. They were taking care of our interests.

Q.87. You had no objections to them taking care of your interests? A. No, we turned it over to them. We always followed them after we turned them over. We have never withdrawn from any committee.

Q.88. You received a check, I believe, or some bonds possibly, possibly sometime before March of 1936 from the custodians? A. That is right.

Q.89. Of this fund, representing 50 per cent of your impounded premiums; you received those and accepted them? A. Right.

Q.90. And I believe you testified that you received a 11 per cent check? A. That is right.

Q.91. Did Mr. Haid send that over to you? A. I delivered our check and received the other in return.

Q.92. You did that up here in this office? A. I sent it over by a boy.

Q.93. By whom? A. A messenger.

Q.94. Did you ever learn anything more about this settlement or the way it was brought about, other than what you have testified to here? A. Not until this present case has been brought up.

Q.95. You have heard in the last few months that this money that was collected at that time was used to corrupt certain political representatives in Missouri? A. I have heard that since.

Q.96. To-wit: Tom Pendergast? A. That is right.

Q.97. And through him the Superintendent of Insurance at that time? A. That is right.

Q.98. You heave heard that. Did you ever know anything about that prior to the time it came out in the newspapers? A. No, I didn't.

Q.99. You never heard anything about it? A. Never heard a word about it.

Q.100. Wasn't it a matter of common gossip around New York and insurance circles that money had been used to obtain political influence in Missouri relative to this settlement? A. It was gossip, yes.

Q.101. You heard that around at various times prior to this coming out in the paper? A. Yes.

Q.102. Didn't you hear that about May, 1935, or June, 1935? A. No, I didn't.

Q.103. You don't recall just when you heard it? A. I don't recall when I heard it.

Q.104. But you did hear it at various times; in fact, it was a matter of common gossip?

Mr. Berger: Let him answer one question at a time.

Mr. Holman: Well, he answered the last question, didn't he?

The Special Master: No, he did not answer it.

Q.105. (By Mr. Holman) Is that true? A. Yes, but not at that time.

Q.106. When did it become such? A. Just prior to this last case here.

Q.107. Well, fix the time. A. I would judge it was early in 1938.

Q.108. Early in 1938. Did you ever make any investigation to try to ascertain whether or not that was true? A. No, we didn't.

The Special Master: Just a minute. I want to understand that. What was it happened early in 1938?

A. Well, we heard around, several people mentioned around the street that there may have been political corruption out in Missouri on that rate case.

The Special Master: In 1938?

A. In 1938. I don't recall when in '38 it was.

The Special Master: That was before the newspaper publicity later on, was it?

A. Well, it may have been around the same time. I am not sure.

The Special Master: That only happened within the last few months.

Mr. Bullitt: It was earlier than that. The federal government was getting on him in 1937.

Mr. Holman: Just let the witness testify.

The Special Master: 1937, that is right.

Mr. Bullitt: Street died February 1, 1938, and it was in full blast then.

A. I had request for federal information for the check we paid out to Street but that is all.

The Special Master: That was while he was alive?

A. I don't know. I don't recall when that was made. As a matter of fact, I didn't know that Street was dead until you just mentioned it.

The Special Master: You didn't? Well, he is dead. You think that was the first information you got was sometime early in 1938 as near as you can now remember?

A. As near as I can remember at the present time.

The Special Master: Have you any way to fix when you were first asked about the check that you gave Street? See if you can fix that in your mind.

A. The first check we were asked to give Street?

The Special Master: No, the first time you were asked by federal men to give information concerning the check that you had given Street. See if you can fix in your mind when that was.

A. I think it was 1938.

Mr. Bullitt: When did they have that legislative investigation in Missouri?

Mr. Berger: March, 1937.

Mr. Holman: That didn't pertain to this, to the question of bribery.

The Special Master: No.

Mr. Berger: Well, it was certainly asked point blank.

Mr. Bullitt: It was asked about bribery. I wasn't there but I was advised. It was just as much in point as anything could be.

Mr. Holman: I believe that is all I have to ask.

Mr. Bullitt: We don't want to ask him anything.

(Witness excused.)

The Special Master: We will adjourn until nine o'clock tomorrow.

Whereupon, the further taking of testimony in said case was adjourned until nine a. m. of Wednesday, August 2, 1939.

MORNING SESSION, WEDNESDAY, AUGUST 2, 1939.

Pursuant to adjournment as aforesaid, at nine o'clock a. m. of said Wednesday, August 2, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

FRANK M. SMALLEY, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. Your name is F. M. Smalley? A. Right.

Q.2. You are president of the Glens Falls Insurance Company? A. Yes, sir.

Q.3. Do you occupy that same position with the Commerce Insurance Company? A. Yes, sir.

Q.4. Did you occupy that position with these companies in 1935 and 1936? A. Yes, sir.

Q.5. Now, I will ask you whether or not you have been generally familiar with the Missouri litigation that has been going on for some years.

The Special Master: The rate litigation, he is talking about.

Q.6. (By Mr. Holman) The rate litigation. A. Generally, yes.

Q.7. You know that your company and some 136 other companies filed suit in the federal court at Kansas City about 1930, and that those cases were pending

until a settlement was made in 1935 and approved in 1936? A. That is my recollection.

Q.8. Who handled this litigation on behalf of the companies, that is, who had charge of it? A. You mean at our home office?

Q.9. No, I mean on behalf of all the companies? A. The Subscribers' Actuarial Bureau had something to do with it, as I recall, and the committee.

Q.10. A sub-committee of that bureau? A. A sub-committee. I couldn't tell you the names of them. Mr. Street, I think, is the only man I could recall as being the head of the committee.

Q.11. He really handled the litigation, did he not? A. To my recollection, yes.

Q.12. As an agent for your company and the other companies involved?

General Bullitt: This is the same old thing, Mr. Master. The facts ought to come out. That is a conclusion.

Mr. Holman: Well, I am asking him his knowledge.

General Bullitt: Well, the Master understands.

The Special Master: Whether or not he was an agent is his conclusion, of course.

General Bullitt: Let him tell the fact, what it is.

Q.13. (By Mr. Holman) Well, let me ask you this way—

General Bullitt (Interrupting): Get him to tell everything he knows.

Q.14. (By Mr. Holman) Is anyone connected with your company directly handling your lawsuit? A. No.

The Special Master: Who handled it for you?

A. You mean these suits?

The Special Master: Your suit, you had a lawsuit pending in court. Did you look after it or did somebody else handle it for you?

A. That was handled, as far as I remember, by the Subscribers' Actuarial Bureau Committee.

Q.15. (By Mr. Holman) And Mr. Street was chairman of that? A. I understood so.

Q.16. And you know that he personally handled the bulk or took upon his shoulders the bulk of the responsibility in handling these cases? A. That is my understanding.

Q.17. And he is bound to have done that representing your company along with the other companies? A. I should say so.

Q.18. Did you hear or receive information that these cases were settled along about May, 1935? A. My recollection is that was in February, 1936.

Q.19. That is true on February 1, 1936, a decree was entered approving the settlement. A. Yes, sir.

Q.20. But didn't you hear along about May or June, 1935, that an agreement had been entered into? A. I could not find any letter or statement or anything of that kind notifying us, and my memory will not enable me to answer that question. I don't remember.

Q.21. Are you a subscriber of the Missouri Inspection Bureau or a member of the Missouri Inspection Bureau, your company, I mean? A. I would say we are. I don't want to swear to it because I haven't looked it up, but I think we are. We are members of most of them all over.

The Special Master: There are two groups of companies that observe a slight difference in the way they pay their agents out there in Missouri.

A. Yes, sir.

The Special Master: Most of them belong to the bureau that he has just spoken of and the others belong to another. Don't you know which yours belong to?

A. We would belong to the one that was advised by the Western Underwriters Association, at that time.

The Special Master: Well, that is it.

A. That is the Missouri Inspection Bureau.

The Special Master: All right.

A. I think that is right.

The Special Master: All right, go ahead.

Q.22. (By Mr. Holman) I will hand you Defendants' Exhibit 115 which purports to be a letter from the Missouri Inspection Bureau addressed to all agents, in which they state that at the request of their subscribers they are writing this letter to the agents. Did you ever see that letter? A. May I take time to look at it.

Q.23. Or a copy of it. Take your time and look it over.

Mr. Bullitt: Why don't you let him see it? That may help his memory. Let him see the original.

A. I don't recall ever having that letter. I wouldn't say we didn't get it in the office, but I don't remember.

The Special Master: Show him the original and see if that helps his memory.

Mr. Holman: The original couldn't help.

A. Well, that is the same office.

Mr. Holman: It didn't go to his office. That couldn't help him.

The Special Master: That didn't go to his office?

Mr. Bullitt: Oh, no.

The Special Master: But that is a circular.

Mr. Bullitt: He may or may not have gotten it. I don't know whether he got it.

A. I don't remember having seen that letter. I wouldn't say I didn't and I wouldn't say I did, but I don't recall.

Q.24. (By Mr. Holman) But, at any rate, along about that time you heard that the cases were settled? A. If I heard it, it was, to my memory, simply by word of mouth that we talked of those things occasionally. Someone might have said they understood the things were getting out of the way.

Q.25. Didn't an article concerning this situation appear in some of the insurance journals? A. I couldn't tell you that.

Q.26. When did you first hear of this settlement? A. My recollection is that was a letter from the Subscribers' Bureau in February, 1936.

Q.27. That letter set out, or the exhibit attached to it, at least, set out that the cases had been settled and set out the terms of the settlement? A. As I remember, yes.

Q.28. And those terms were that the policyholders would receive 20 per cent, the companies would receive 50 per cent of the impounded premiums up to May 1, 1935? A. In cash and bonds.

Q.29. In cash and bonds immediately? A. Yes, sir.

Q.30. And 30 per cent would be turned over to trustees to pay all expenses on both sides of the case and the balance returned to the companies; is that your understanding? A. 20 per cent to the policyholders.

Q.31. 50 per cent immediately? A. 50 per cent came to us and 30 per cent to be held by Mr. Street and Mr. Folonie for expenses. Now, you said about the rest, I don't know what you mean by "the rest."

Q.32. If they didn't use it all for expenses. A. Oh, if they didn't use it for expenses.

Q.33. The balance came back to you? A. Yes; I was trying to figure out where you get the 100 per cent. It was out of the 30 per cent you are getting it.

Q.34. You were familiar with that at least in February, 1936? A. Yes, sir, I read that letter.

Q.35. You agreed to this settlement, your company? A. Naturally, we had to.

Q.36. You had to? A. Well, I say we had; we were riding along with the rest of them. There was nothing to force us. We did agree with it.

Mr. Bullitt: They didn't agree; they just acquiesced and accepted it.

Q.37. (By Mr. Holman) You made no objection to it?

A. No, sir.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 140, 141 and 142, EFM.")

Q.38. I hand you Defendants' Exhibit 140, which I now offer in evidence, and ask you if that isn't a check issued by the Glens Falls Company to C. R. Street, Agent, for $2,877.38? A. A photostatic copy of the check.

Q.39. I mean a photostatic copy. The original check is just like that? A. Well, I assume so. If it is a photograph of it, it ought to be.

Q.40. This came from your files? A. Yes, sir.

Mr. Holman: And I offer the endorsement thereon also.

(Which said Defendants' Exhibit 140, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Glens Falls INSURANCE COMPANY No. 63675

Glens Falls, N.Y. March 20, 19 36

CHASE NATIONAL BANK

PAY TO THE ORDER OF [redacted] $2,877.58

[redacted] DOLLARS 58 CTS

FOR Appeal Bond, Glens Falls Automobile

J. M. Gruber

Robert

AS COUNTERSIGNED THIS COMPANY

AS COUNTERSIGNED THIS COMPANY

D 140

Q.41. Now, how did your company happen to issue that check to Mr. Street? How did that come about, if you know? A. Yes, sir; my recollection is that either Mr. Haid or Mr. Erskine—and I wouldn't be able to tell you which—from this office—I know the Insurance Executives' Association called me on the phone and asked me to send a check for 5 per cent for legal expenses.

Q.42. Is that all that was said? Just go ahead. A. That is all I remember.

Q.43. Did he mention about the 11 per cent check he was sending? A. No, sir.

Q.44. Nothing was said about that? A. Not that I remember it.

Q.45. Had you received the 11 per cent check at that time? A. No, sir.

Q.46. When I say "you," I mean your company. A. Yes, sir.

Mr. Bullitt: "Yes" doesn't mean they received it. The "yes" means you understand his question?

A. Yes, sir. May I amplify that a little?

Q.47. (By Mr. Holman) Yes. A. On March 20th this check was drawn. Our records show we received the 11 per cent check on March 23rd or 24th, after this had gone, and I don't remember that anything was said about the 11 per cent check at the time they called us up.

Q.48. If anything was said about it, you don't remember it? A. I don't remember it.

Q.49. When you refer to 11 per cent, you refer to 11 per cent of your total impounded premiums? A. Yes.

Q.50. And does that check represent 5 per cent of your total impounded premiums? A. Yes.

Q.51. Of both companies? A. Yes, sir. Yes, that is for both companies.

Q.52. Now, did Mr. Erskine or Mr. Haid tell you what this check was desired for, what it was wanted for? A. Why, as I said, legal expenses.

Q.53. For legal expenses? A. Yes.

Q.54. Had your company ever paid any legal expenses before in that manner? A. In this particular case?

Q.55. Yes. A. No, not that I know of.

Q.56. Heretofore legal expenses had been collected by the assessments of the Missouri Inspection Bureau, isn't that true? A. That I couldn't answer.

Q.57. Or some other similar organization? A. I don't know that any call was ever made on us. I

wouldn't swear that any call was ever made on us for legal expenses in connection with this case. I don't remember.

Q.58. All right, let me ask you this: In February of 1936 you say you knew that 30 per cent of the total impounded premiums had been delivered to the trustees under the jurisdiction of the Subscribers' Actuarial Committee to pay all expenses. Now, didn't it occur to you as unusual that they would be calling up here the next month and asking you for 5 per cent, a check for 5 per cent of your impounded premiums for that purpose? A. Not after I read that paragraph in the letter where it told what the expenses covered.

Q.59. Well, did you stop to calculate what 30 per cent of the $9,000,000.00 is? A. No, sir, I didn't make any figures at all.

Q.60. Didn't you know that the impounded premiums were about $9,000,000.00? A. I didn't think of it in that way at the time, no sir.

Q.61. That would be about $2,700,000.00, would it not? A. 30 per cent of $9,000,000.00, it apparently would, if your arithmetic is correct.

Q.62. Don't you think that would pay a lot of expenses? A. Naturally would.

Q.63. Did you believe at that time that the expenses had exceeded that amount? A. I didn't know anything about what the expenses had been.

Q.64. Did you ask the gentleman that called you? A. Did I ask him what?

Q.65. Did you ask the gentleman that called you about these things? A. No, sir.

The Special Master: Let me make a suggestion. That question has been asked a good many times, but I want you to keep in mind, if you will, that this 5 per cent you are talking about did come out of the 30 per cent.

Mr. Holman: That is true.

The Special Master: So the question of how big the $2,700,000.00 might be in comparison to all conceivable expenses really isn't the point.

Mr. Holman: He testified, your Honor, that he hadn't gotten the 11 per cent check yet and nothing had been said about it.

The Special Master: That is right. In this particular case that is true but it all happened at once, but as a matter of fact, the 5 per cent did come out of the 30 per

cent. The peculiarity of the thing was that it was paid to them and paid back, and not that they put up the money in addition to the 30 per cent. Nobody did that.

Mr. Holman: That is correct.

The Special Master: All right, now, let's go ahead.

Q.66. (By Mr. Holman) I believe you said you weren't sure whether Mr. Haid or Mr. Erskine called you, but one or the other did? A. I don't recall, but one or the other.

Q.67. Did you ask them why they needed this additional money? A. No, sir.

Q.68. Did you ask them whether or not the trustees had spent the whole 30 per cent? A. No, sir.

Q.69. You merely sent it to them because they asked you to? A. Yes, sir.

Q.70. Do you ordinarily send out money from your company just because someone asks you to? A. To that question, no. It depends on who the somebody is.

Q.71. That is right. Would you do that any time Mr. Haid or Mr. Erskine would ask you to? A. Yes, sir.

Q.72. You wouldn't question what they would ask you? A. No, sir.

Q.73. It is your responsibility is it not, to try to keep down the expenses of your company as much as possible? A. I suppose it is.

Q.74. Don't you think you might do a better job of that if you would inquire into the expenditures a little more carefully? A. Do I have to answer that? That is an obvious question.

The Special Master: No, you don't have to answer that question.

Q.75. (By Mr. Holman) I will hand you Defendants' Exhibit 141 which I now offer in evidence and ask you to explain that. A. That is a photostatic copy of an order on the cashier for a check for $2,877.38.

Q.76. Did you write that order? A. No, I didn't write the order, but that is my initial there, ordered by me.

(Which said Defendants' Exhibit 141, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

ORDER ON CASHIER

Date March 20, 1936 Check No. 63675

☒ Glens Falls ☐ Commerce ☐ Indemnity ☐ Investing Corp.

Draw check for $ 2877 38

Payable to C. R. Street, Agent

For Legal expenses Glens Falls & Commerce Missouri rate case Legal Exp.

☐ LOCAL BANK
☒ CHASE
☐ CHICAGO
☐ MONTREAL
☐ .....

Charge to

☐ MAIL
☐ RETURN

Ordered by

Approved by

FORM 78—C2—6-35

D 141

Q.77. The check was ordered by you and approved by whom? A. By a vice-president, Buddy, who was in the office at the time I had the telephonic conversation. It is our custom up there when any money is paid, some officer orders it and some other officer approves it and the cashier then draws the check.

The Special Master: What is the object of having it approved by two officers?

A. Why, I suppose a check, the same as we have an order that no check shall be drawn unless there are two officers' names on them, with the exception of certain checks.

The Special Master: What is the object of that?

A. Protection. I sometimes wonder myself.

The Special Master: What protection is it if the officers don't take any pains to find out what it is about?

A. Well, we do.

The Special Master: But not in this case?

A. Well, is that a slam at me for not finding out? I told you I had perfect faith in Mr. Haid.

The Special Master: It is a mere question.

A. Yes, sir.

The Special Master: It may be a slam; the Court will pass upon that.

A. All right.

The Special Master: But it is a question as to the fact.

A. Yes, sir.

The Special Master: Is the object of having two officers pass it in order to get the judgment of two officers as to whether it is a proper charge against the company?

A. I suppose it is.

The Special Master: That implies they will look into it?

A. Well, it happened in this particular case, we are talking about this particular case, Mr. Buddy, as I recall it, was in the office at the time this particular request came in, and I told him to draw the card and I would order it and I told him of the conversation. He understood it and he O. K.'ed the card.

The Special Master: All right.

A. And the check was signed, might have been signed by any two of the officers. Now, don't understand that all of our checks require two signatures.

The dividend checks and salary checks only require one signature, but must have one imprinted signature.

The Special Master: I understand that no check requires two signatures if it is a check that by an established practice is authorized in advance. It is only something that has to be authorized at the time that requires two signatures?

A. The ordinary check for paying any kind of bills for goods or for assessments of bodies and that kind are signed by two officers.

The Special Master: I understand.

Q.78. (By Mr. Holman) I believe you testified you explained this conversation to Mr. Buddy? A. My recollection is that he was in my office when it came in. If he was not, he came in very shortly afterwards, and I told him of the conversation.

Q.79. Did you two discuss this situation and whether or not you should pay the money? A. Why, I have no recollection of any conversation, what it particularly was. We probably did. What we said, I don't know.

Q.80. Have you ever talked to any person about the settlement of the Missouri rate cases? A. To any person?

Q.81. Any person about the settlement who has told you that money was used in high political places in Missouri to obtain this settlement? A. No, sir.

Q.82. You have never heard that discussed? A. No, sir.

Q.83. Do you know anything about it? A. No, sir.

Q.84. Now, as I understand it, when you received this 11 per cent check that was a complete surprise to you? A. Yes, sir.

Q.85. You had already sent the check to Mr. Haid payable to Mr. Street? A. Three or four days before.

Q.86. Where is Mr. Buddy now? A. Mr. Buddy has been on his vacation. I think he got home last night.

Q.87. Got home to Glens Falls last night? A. Yes, I think he did, either last night or yesterday noon, afternoon sometime.

Q.88. Is there anyone else connected with your company that knows anything about this situation? A. I don't think so, not that I know of.

Q.89. Or that knows anything about the matters I have inquired of you? A. No, I will say no.

Mr. Holman: That is all.

Cross Examination by Mr. Bullitt.

XQ.90. Mr. Smalley, the reason you have two officers to sign the authorization for issuing checks is that at least two officers will know that certain moneys are going to be paid out, isn't that it? A. Well, it is because the by-laws of the company call for it.

XQ.91. The reason for that is that there will be at least two men will know certain checks are being paid out, and one man doesn't have complete control of paying money out? A. I would assume that is the reason the by-laws were passed.

XQ.92. At the time that you gave this 5 per cent check of $2,877.38 to the order of C. R. Street, Agent, you knew that you had a suit out in Missouri in connection with this rate controversy, didn't you? You knew you had a suit out there? A. Yes.

XQ.93. You knew that the court had impounded $57,000.00 of your funds, didn't you? A. Well, I assume those figures are correct, yes.

The Special Master: No, he asked you, did you know that that much was impounded?

XQ.94. (By Mr. Bullitt) Didn't you know that you had impounded in the court out there some $57,400.00 of the premiums that you had collected from the policyholders which the court impounded? You knew they had that impounded fund? A. I knew, if those figures are correct. I assume they are.

XQ.95. Well, you knew? A. All right, yes, put it that way, because I imagine those figures—you said $57,000.00, and I don't know whether it is $57,000.00 or $53,000.00, or whatever it is.

XQ.96. All right, now, you also received back, didn't you, some $28,750.00? A. Whatever it is, 50 per cent.

XQ.97. That is $28,750.00. A. That is for both companies.

XQ.98. Then you later got 11 per cent, or $6,200.00 more? A. The dollars, I wouldn't swear to, but the percentages, yes.

XQ.99. It is so easy, look at it. Look at your own record. Didn't you get something over $6,000.00 additional back? A. $5,478.00, yes, all right. That is the 11 per cent of Missouri impounded premiums, April 30th, that is correct.

XQ.100. That is right, then?

Mr. Berger: Just a minute, Mr. Bullitt; that is for the Glens Falls. The Commerce was $850.00.

XQ.101. (By Mr. Bullitt) Then you got back out of that lawsuit altogether around $35,000.00, didn't you? A. If those totals, those figures, yes, those two percents, 50 per cent and 11 per cent.

XQ.102. When you paid out $2,877.38 to C. R. Street as agent, you did know that you had this other amount in controversy, didn't you? A. What other amount?

XQ.103. Why, this $57,500.00 of impounded funds. A. We knew the whole amount was in controversy.

XQ.104. Well, I know; that is $57,500.00, isn't it? A. All right, yes.

XQ.105. You knew that, didn't you? A. Yes.

XQ.106. And so you did know that when you paid out $2,877.38 to Street as agent, it was on account of a lawsuit where you had $57,000.00 of your money tied up; didn't you know that? A. Yes.

XQ.107. That is right, so you did look into it when you paid this money out to the extent of knowing it was in a suit where you had $57,000.00 involved? A. Yes.

XQ.108. You charged that $2,877.00 to legal expenses, didn't you? A. Yes, sir. It shows on the record.

XQ.109. Well, I say, and you did that at the time you gave the check? A. Yes, I think—the record says so right there.

XQ.110. Look at your own initials. A. Well, all right, yes, legal expenses; it is on the order.

XQ.111. And at the time you did it, you paid it to legal expenses in a lawsuit where you had $57,000.00 of your money tied up? A. Yes, sir.

XQ.112. So you did look into it and knew what you were paying the money for; it was for legal expenses in a lawsuit? A. Right, yes, sir.

Mr. Holman: At the time you had received this money, you had received 50 per cent? A. Yes.

Mr. Holman: You had received the 50 per cent?

XQ.113. (By Mr. Bullitt) So at the time you paid the $2,877.00 you had already received in that lawsuit some $28,000.00, didn't you? A. Yes.

XQ.114. So you were paying legal expenses in a suit that you had just recovered a whole lot of money in, that is right, isn't it? A. Yes.

XQ.115. All right. Now, you had met Mr. Street, hadn't you, or had you ever met him? A. I met him

once or twice in meetings in the years gone by. He wouldn't know me if he met me on the street.

XQ.116. Did you ever by telephone or telegraph or by letter or by personal talk ever employ Mr. Street or ask Mr. Street to do anything for you in connection with this Missouri rate litigation? A. No, sir.

XQ.117. Did you ever know, see, write, telegraph, telephone or communicate in any way with Mr. Pendergast? A. No, sir.

XQ.118. Did you ever meet Mr. McCormack? A. No, sir.

XQ.119. Did you ever write, telegraph, telephone or talk to Mr. McCormack in your life? A. No, sir.

XQ.120. Did you know Mr. O'Malley, the Insurance Commissioner? A. Personally?

XQ.121. Yes. A. No, sir.

XQ.122. Did you ever write, telephone, telegraph or communicate with him in any way concerning the Missouri rate situation? A. No, sir.

XQ.123. Did you ever authorize Mr. Street in any way to pay any money to Pendergast or O'Malley or McCormack or for any purpose whatever except as might be inferred from paying it to him for legal expenses? A. No, sir.

Mr. Bullitt: That is all.

Re-Direct Examination by Mr. Holman.

RDQ.124. Did you authorize Mr. Folonie, an attorney in Chicago, to file that suit for you down there in Kansas City? A. I don't know what you mean by "authority."

RDQ.125. Did you directly contact him in any way? A. No, sir.

RDQ.126. Then who did that for your company? A. I imagine the Subscribers' Actuarial Bureau.

RDQ.127. And you knew that they were acting as your agent in doing that? A. The Subscribers' Actuarial Bureau?

RDQ.128. Yes. A. Why, I suppose we did know it. We knew they represented all of the companies and we knew that they would look after our interests in the matter of engaging counsel and that is all I can tell you.

RDQ.129. You made no objection to that? A. No, we made no objections to it.

RDQ.130. You made this check to C. R. Street, Agent? A. Yes, sir.

RDQ.131. Whose agent? A. I don't know.

RDQ.132. He was your agent, wasn't he? A. He might have been for the purpose of handling these legal affairs, yes.

Mr. Holman: That is all.

Re-Cross Examination by Mr. Bullitt.

RXQ.133. To refresh your recollection, wasn't this suit in your name, in the name of the Glens Falls Insurance Company, brought by the lawyers and then that the Western Inspection Bureau notified you that the suit had been brought and you acquiesced in it? Isn't that really what happened? A. I don't know whether it was the Western Inspection or our Subscribers' Actuarial Bureau. Whatever bureau it was, we were probably informed and told our interests would be looked after and we acquiesced in it.

Mr. Bullitt: That is all.

(Witness excused.)

Mr. Holman: In connection with the examination of this witness we offer in evidence Defendants' Exhibit 142.

(Which said Defendants' Exhibit 142, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

March 20, 1936

Mr. J. D. Erskine, Secretary
Insurance Executives Association,
116 John Street,
New York City.

Dear Mr. Erskine:

CR 63675 3/24/36

In conformity with our telephone conversation, we are enclosing herewith check for $2,877.38 payable to C. R. Street, Agent, which we understand represents the share of the Glens Falls and Commerce Insurance Companies in legal expenses in connection with the Missouri Rate Litigation matter.

Yours very truly,

RSB:DRS
Enc.

Vice President

Glens Falls Insurance Co. $2490.85
Commerce Insurance Co. 386.53
2877.38

Proportion to be refunded by Commerce
$386.53
Refunded 3/25/36 MMW.

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H. F. WATERMAN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. Mr. Waterman, what is your position with the Agricultural Insurance Company? A. I have the title of secretary.

The Special Master: With which company?

Judge Henson: Agricultural.

The Special Master: I don't remember that company is one of the 137 companies.

Mr. Berger: Yes.

Judge Henson: At Watertown, New York.

The Special Master: Go ahead, I don't remember it.

Q.2. (By Judge Henson) Where is the company's home office? A. At Watertown, New York.

Q.3. Was that its home office in 1935 and 1936 and ever since? A. Yes.

Q.4. Were you secretary of this company in 1935 and 1936? A. Yes.

Q.5. You knew you had a suit in the federal court in Kansas City involving rate litigation in the State of Missouri, did you? A. Yes, sir.

Q.6. Who was acting for you in bringing and handling that suit? A. Well, the counsel for the Western Underwriters Association at that time, I think, was Hicks and Folonie under the direction of the Subscribers' Actuarial Committee.

Q.7. You either authorized or acquiesced in the suit being brought in your company's name? A. Yes.

Q.8. You knew of its pendency all along then until it was settled? A. Yes.

Q.9. Now, Mr. Waterman, when did you first hear that your suit had been settled? A. To the best of my recollection the first knowledge that I had of it was in the spring of 1935. I heard the report that there had been a compromise settlement reached.

Q.10. Do you recall in a general way what the terms of the compromise were? A. Well, vaguely, yes, personally I wasn't particularly concerned. I was merely relieved to know that there was some possibility of ending the litigation. As I recall it, the agreement was that the policyholders were to receive 20 per cent and the companies were to receive 80 per cent.

Q.11. Do you recall that of the 80 per cent the companies were to receive 50 per cent of the impoundments

outright and 30 per cent was set aside in the hands of trustees to pay expenses? A. Only vaguely, because that was a matter of accounting and didn't come under my jurisdiction, but I had the impression that that was the fact.

Q.12. Did you hear again from your lawsuit in February, early in February, 1936, that the court had made the order of distribution? A. That was my understanding, that it had been approved by the court.

Q.13. And was the understanding at that time that the companies would get 50 per cent, the policyholders 20 per cent and that 30 per cent was set out in the hands of Street and Folonie as trustees to pay the expenses of the litigation, including the State of Missouri and your own companies, and if anything remained, it was to be returned to the companies? Do you remember that that substantially was the court decree? A. Well, I have no—I couldn't swear that I knew that in those exact terms. I had a vague—I have a vague recollection that that was the manner in which the funds were to be distributed.

Q.14. Now, Mr. Waterman, I will ask you whether your company afterwards received 50 per cent of all of its impoundments in this case up to May 1, 1935? A. That is my recollection, yes.

Q.15. And your company accepted it? A. Yes, sir, I suppose so.

Q.16. I will ask you then if it isn't a fact that in March after this settlement in February, if your company didn't receive 11 per cent from Street and Folonie, Trustees, out of the 30 per cent fund? A. We received a remittance, I think, sometime in March, but just what percentage that was of our impounded premiums, I am not able to state.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 143, 144 and 145, EFM.")

Q.17. I show you Defendants' Exhibit 143 and I now introduce it and offer it in evidence, and will ask you what that is. A. That is a check—

Q.18. (Interrupting) That is a photostat of your check? A. Yes, that is the check which I signed pursuant to a telephone conversation from Mr. Erskine's office.

(Which said Defendants' Exhibit 143, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Exhibit 1

Agricultural 100%

Agricultural

No 197

WATERTOWN, N. Y. MAR 21 1936

PAY TO THE ORDER OF E. R. Stuart Agent $2049 49/100

AGRICULTURAL INSURANCE COMPANY

TO BANKERS TRUST COMPANY
1-103 OF NEW YORK, N. Y.

Exhibit 2

VOUCHER No.

WATERTOWN, N.Y., MAR 21 1936 193

RECEIVED FROM THE

AGRICULTURAL INSURANCE COMPANY

Two thousand forty-nine and 49/100 DOLLARS,

Legal Expenses re: Minnesota Rate Case

$2049 49/100

Please Receipt and Return

D. 143

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Q.19. Who is the other name on that? A. H. W. Tomlinson, our treasurer.

Q.20. This check is for $2,049.89? A. Yes.

Q.21. Who was it that requested that check? A. Mr. Erskine.

Q.22. Is he from Mr. Haid's office? A. He is Mr. Haid's assistant.

Q.23. Did Mr. Erskine call on you up there at Watertown? A. No, Mr. Erskine telephoned to our office.

Q.24. What did he say? A. He first talked to one of our vice-presidents and he didn't know anything about the Missouri situation. It was out of his jurisdiction, so he had Mr. Erskine talk to me. Mr. Erskine said he wanted us to send this check payable to the order of Mr. Street as agent.

Q.25. Did he give you the figures or the percentage? A. He gave me the figures. There was nothing said about percentage.

Q.26. That was $2,049.89? A. Well, that is probably true. I couldn't swear to that.

Q.27. Anyway, you intended to write the check for the figure he stated. What else did he say about it? A. I naturally asked him what it was for and he said, as I recall, that it was for some legal expenses in connection with the Missouri rate case.

Q.28. Did you ask him for anything more definitely as to what the expenses were? A. Yes, but I didn't get any satisfaction.

Q.29. His answers were evasive? A. He merely said that he didn't know. That is my recollection.

Q.30. Then he wasn't able to tell you anything more definitely than he wanted it for legal expenses? A. Apparently not.

Q.31. You knew at the time, didn't you, that this 30 per cent had been set out for that purpose and was in the hands of trustees? A. Well, vaguely. As I said before, I wasn't familiar with the details because it was an accounting matter.

Q.32. Didn't it occur to you then that this 30 per cent would have been the source for legal expenses? A. Possibly, but I don't—

Q.33. (Interrupting) But you wrote the check anyway? A. I had the check issued, yes.

Q.34. Did you talk the matter over with any of your associates? A. With Mr. Wallace, our vice-president, who had the first conversation with Mr. Erskine.

Q.35. What did Mr. Wallace think about it? A. He didn't know anything about it. He professed not to know anything about the case.

Q.36. Then how did it come that you sent the check? A. Because Mr. Erskine assured me that it was in order to do so.

Q.37. You sent it then on his representation, although he wasn't able to tell you very much about it? A. That is true.

Q.38. Did you express some doubts about it in the telephone conversation? A. I can't recall.

Q.39. I see the check is made to C. R. Street, Agent? A. Yes, sir.

Q.40. Was that the way Mr. Erskine asked it to be made? A. That is my recollection, yes.

Q.41. You knew Mr. Street? A. Slightly. I had come in contact with him several times.

Q.42. You knew he was chairman of the Subscribers' Actuarial Committee, which was handling the litigation? A. Yes.

Q.43. And why did you send the check to Mr. Street? A. At Mr. Erskine's request.

Q.44. You not only made the check payable to Mr. Street, but you sent it to Mr. Street, didn't you? A. Yes.

Q.45. I show you Exhibit 145 and will ask you if that is a carbon copy of the letter you sent to Mr. Street in which you enclosed the check, and I now introduce Exhibit 145. A. I think it is, yes.

(Which said Defendants' Exhibit 145, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Exhibit 2

P.E.C.

March 21, 1936

Mr. Chas. R. Street, Mgr.
Great American Insurance Co.
310 S. Michigan Ave.
Chicago, Ills.

Dear Sir:

We are in receipt this morning of telephone communication from Mr. Haid's office in New York, and Mr. Erskine has asked us to send to either yourself or to Mr. Falomie our check for $2049.89 in payment of some extraordinary expenses incurred in connection with the Missouri case.

We beg to transmit the check, herewith, together with a receipt, and trust that we shall have some explanation as to the reason for this disbursement.

Yours very truly

HFW:JC

Secretary

D.14

Q.46. Did you hear from Mr. Street that you recall? A. Mr. Street returned the receipts which I sent with the check.

Q.47. You asked for a receipt from him? A. We usually do if it is a check which is sent out for anything in the way of expenses.

Q.48. Now, I show you Defendants' Exhibit 144, and will ask you if that is Mr. Street's reply to your letter? A. Yes.

Judge Henson: I now introduce Exhibit 144.

A. That seems to be, yes.

Q.49. That is it? A. Yes.

(Which said Defendants' Exhibit 144, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Exhibit 2

WESTERN DEPARTMENT
[illegible] MICHIGAN AVENUE
POST OFFICE BOX 795
CHICAGO

Great American Insurance Company New York

C R STREET
Vice President
G D GREGORY
Secretary

CHICAGO March 23, 1934.

Dear Mr. Waterman:

I am returning receipt for check enclosed in your letter of the 21st.

It is a long story but one told in detail to a few in New York, all of the "big boys" who could be gotten together during the winter vacation season - Messrs. Muth, Warner, Koop, Sturm and Haid. Will tell you all about it at White Sulphur.

With best regards, I remain

Yours very truly,

CR

Mr. H. F. Waterman, Secretary,
Agricultural Insurance Company,
Watertown, N. Y.

D144

Q.50. Now, I will ask you whether or not he returned the receipt with the letter as it purports to be? A. Yes, he did. There was a receipt returned which I have seen. I suppose Mr. Street sent it.

Q.51. Now, Mr. Street says in this letter: "It is a long story." This letter is addressed to you, Mr. Waterman. He says, "It is a long story, but one told in detail to a few in New York, all the 'big boys' who could be gotten together during the winter vacation season Messrs. Kurth, Warner, Koop, Sturm and Haid." Did you understand and recognize them as the "big boys"? A. I accepted Mr. Street's designation of them being the "big boys."

The Special Master: You knew who they were?

A. I knew they were presidents or managers of companies, New York.

The Special Master: Of certain big companies?

A. Yes, sir.

Q.52. (By Judge Henson) And with this assurance were you satisfied to let Mr. Street go ahead with the check and use it? A. Why we have always had the greatest amount of confidence in Mr. Street's ability to handle this litigation and other affairs of the company in connection with the Subscribers' Committee.

Q.53. That was really the reason you didn't hesitate to make the check to Mr. Street and send it to him? A. Yes, sir.

Q.54. It says in the letter further: "Will tell you all about it at White Sulphur." What did you understand by "Will tell you all about it at White Sulphur." A. I suppose he meant the subject of my letter.

The Special Master: He was going to explain to you what the money was for?

A. I suppose so.

Q.55. (By Judge Henson) Now, then, did he ever explain that to you at White Sulphur or anywhere else? A. I don't recall that I ever had a conversation with Mr. Street after that date.

Q.56. Did you ever seek to contact him after that date to inquire more about "it," that is, this settlement? A. No. One reason for that was that in the month following that correspondence the semiannual meeting of the Western Underwriters Association was held at White Sulphur, but I did not attend that meeting as I had some business in the West and was out in the field at

that time, and I don't recall that I ever saw Mr. Street again.

Q.57. Did you ever write him for an explanation? A. No, sir.

Q.58. Didn't it occur strange to you that he didn't make an explanation at the time he wrote this letter, Exhibit 144? A. Knowing Mr. Street, I would say no.

The Special Master: Explain that a little more, will you?

A. Mr. Street was not a man who explained things to people whom he thought didn't have any business to know about them.

The Special Master: You had a right to know what you paid out your money for.

A. Yes, and he volunteered to tell me at some future date, but that date never eventuated. Apparently Mr. Street didn't see fit to commit anything regarding that in correspondence.

Q.59. (By Judge Henson) Have you any idea why he couldn't have put this in correspondence? A. No, sir, I had no idea.

Q.60. Have you ever talked to anyone who did talk to him at White Sulphur or elsewhere and to whom he explained the settlement? A. No, sir.

Q.61. You never made any further effort then to find the details than what you have just said? A. No, sir.

Q.62. Was this matter submitted to your board of directors? A. No, sir.

Q.63. If I understood—I didn't get that vice-president's name. I would thank you to state that again, who that vice president was. A. A. C. Wallace.

Q.64. Where is Mr. Wallace now? A. As far as I know, he is in Watertown.

Q.65. Is it your idea that you have told substantially what Mr. Wallace knows about it?

Judge Henson: I am asking that, gentlemen, so as to know whether I want to call him.

A. Yes, Mr. Wallace's involvement in the telephone conversation merely came about in this way: That Mr. Erskine first tried to contact Mr. Waite, our president, and he followed down the list of officers and Mr. Wallace, he got Mr. Wallace on the telephone, told him what he wanted, and Mr. Wallace said he didn't know anything about it, but he would tell me about it. When he told me about it, I demanded a little more detail, so Mr.

Wallace said, "I will get Erskine on the telephone and let you talk to him," which he did. That is all of Mr. Wallace's connection with it.

Q.66. When Mr. Erskine assured you this was going to Mr. Street who would pay it out, that satisfied you? A. Yes, he represented that it was an emergency, that he wanted the check immediately, and that is why the matter was not held up until Mr. Waite's return.

Q.67. Did you ever ask Mr. Street or Mr. Erskine whether the fund that was set out for expenses had been exhausted so that he had to have this $2,000.00 check from you? A. No.

Q.68. Did he tell you what the emergency was that they had to have this money? A. No, sir.

Q.69. Did you ask him? A. Yes.

Q.70. Did Mr. Erskine tell you? A. Simply told me that it was something in connection with the Missouri rate case. He apparently was not familiar with the circumstances.

Q.71. Mr. Erskine really couldn't satisfy your curiosity at all, could he? A. No, sir.

Q.72. And nobody else has, ever has? A. No.

The Special Master: I understand that Mr. Erskine representing your executive association gave you to understand it was an emergency and that they needed the money right away, but he couldn't give the explanation? A. That is true.

The Special Master: But to send it to Mr. Street?

A. Yes, sir.

The Special Master: And rather than take the chance on failing to send it, you sent it and waited for Mr. Street?

A. Yes, sir.

The Special Master: And Mr. Street told you that it was a long story that had been explained to a few of the "big boys" but he would explain it to you at White Sulphur?

A. I assumed from that Mr. Street would make a report at White Sulphur.

The Special Master: Did you feel from the letter he wrote you that he felt that the matter was confidential?

A. That would be my impression.

The Special Master: That is the impression you got, is it?

A. Yes.

Judge Henson: That is all.

Cross Examination by Mr. Bullitt.

XQ.73. Look at your letter to Mr. Street dated March 21, 1936, and tell us whether that refreshes your memory as to what Mr. Erskine said to you about the reason for asking for the $2,049.89 check? A. Well, I said in my letter it was a payment of some extraordinary expenses in connection with the Missouri case. I assumed that was legal expenses.

XQ.74. You wrote that letter on the very same day, three years ago, that you talked to Mr. Erskine, didn't you? A. I would judge so from this letter. That is the best of my recollection.

XQ.75. You had this conversation fresh in your mind at that time, didn't you? A. Yes.

XQ.76. And you then said it was "extraordinary expenses." You didn't mention the word "emergency" in your letter, or was that just your inference? A. That was the inference that I got from Mr. Erskine's conversation.

XQ.77. Mr. Erskine never said anything about it being an emergency, did he? A. No, he merely said he wanted the check forwarded that day.

XQ.78. You inferred there must be an emergency, is that it? A. Oh, yes.

XQ.79. Now, I show you a voucher dated March 21, 1936, which has not been introduced in evidence and which I am now offering in evidence and ask you if that is the voucher, the receipt that you sent on to Mr. Street to be signed by him? A. Yes, sir.

Mr. Bullitt: Mark that whatever the next number is.

Judge Henson: I will clear that, and now stipulate that Defendants' Exhibit 143 shall include not only the check but the receipt.

Mr. Bullitt: That is all right

Judge Henson: That is just my oversight.

Mr. Bullitt: That is all right.

XQ.80. In that voucher which Mr. Street signed, you describe it as "legal expense." Why did you have the words "legal expense" put in there? A. That is the only account we knew of that it could be charged to.

XQ.81. What is that? A. That is the only account we thought it could be charged to.

XQ.82. In whose handwriting, if you know, are the words "agent for companies" beneath the signature of Mr. Street? Did he put that in? A. I don't know.

XQ.83. Is that the handwriting of any of your people? A. I don't recognize it.

XQ.84. Now, at the time that you sent this $2,049.89 to Mr. Street, you had some $40,000.00 of your premiums impounded in the hands of the court, hadn't you? A. Yes, sir.

XQ.85. That is right, isn't it? A. Yes, sir.

XQ.86. And you had already received back something over $20,000.00 in cash from that fund, hadn't you? A. That is my understanding, yes.

XQ.87. Then or about that time you got 11 per cent more, some $4,490.00 didn't you? A. Mr. Erskine in his telephone conversation that day assured me that he would receive within a short time a check for forty-four hundred and some dollars.

XQ.88. You did get it? A. I think we got it the following day.

XQ.89. So that your company received nearly $25,000.00 out of that litigation? A. Yes.

XQ.90. And you paid out this $2,000.00 on account of what you understood was legal expenses. Now, did you ever know Mr. T. J. Pendergast of Kansas City or Mr. A. L. McCormack of St. Louis or Mr. O'Malley, Superintendent of Insurance? A. I have met just casually Mr. McCormack at one time, but I never knew him. I merely met him. I think at the time I met him he was not in the local business. He was connected—

XQ.91. (Interrupting) Did you ever know Pendergast? A. No, I never knew Mr. Pendergast.

XQ.92. Did you ever know O'Malley? A. I never did.

XQ.93. Did you at any time by telephone, telegram, letter or personal conversation have any sort of communication with Mr. Pendergast or Mr. O'Malley or Mr. McCormack directly or indirectly concerning this Missouri rate litigation or its settlement? A. No, sir.

XQ.94. Did you at any time by telephone, telegram, letter or personal conversation ask Mr. Street to do anything for you in connection with that litigation? A. No, sir.

XQ.95. Did you ever ask in any way Mr. Street to commit bribery or to pay any money? A. No, sir.

XQ.96. To bring about this compromise? A. No, sir.

Mr. Bullitt: That is all.

Re-Direct Examination by Judge Henson.

RDQ.97. You knew Mr. Street as chairman of the Actuarial Committee was really conducting the litigation, though? I believe you stated that? A. Yes, sir.

RDQ.98. I believe you say that you had a receipt here to show this was legal expense because you didn't know where else to put it? You just answered him that you didn't know what else to charge it to? A. Our chief accountant asked me to what account he should charge this charge, and I suggested that he charge it to legal expense. I knew of no other place to charge it.

RDQ.99. You hadn't gotten that information, however, from Mr. Erskine? A. Only by inference.

RDQ.100. Now, you say in your letter to Mr. Street, Exhibit 145, you speak of this as being in payment of some extraordinary expenses. Where did you get the idea this was extraordinary expenses? A. Well, merely from the fact that we had presumed that all of the legal expenses had been taken care of through our assessments.

The Special Master: In the rating bureau?

A. Well, the Actuarial Bureau, the committee, and I supposed this was something which had come up since. That is why I used that word "extraordinary."

RDQ.101. Now, it being "extraordinary expenses," something Mr. Erskine didn't tell you or something which Mr. Street didn't tell you, that is why you called for an explanation in your letter to Mr. Street? A. Right.

RDQ.102. And Exhibit 144 is the only thing you got assurances? A. Yes.

RDQ.103. Which, of course, you took to be something extremely confidential or he would have written you about it? A. Well, I presume that would be the inference.

Judge Henson: I believe that is all.

The Special Master: Well, you say you presume that would be the inference; that could be the inference. Is that the impression you got at the time?

A. That was my impression.

Mr. Berger: Or another inference would be that it might be long and involved and couldn't be covered by a letter; isn't that right?

A. Very true.

Mr. Berger: That is all.

Judge Henson: Just a word, Mr. Waterman. You don't know of anyone else that could give us any further help, anyone else of your company?

A. No, sir, I do not.

Judge Henson: And you have furnished all of the record that you have?

A. Yes, sir.

Judge Henson: And it has been referred to and put in evidence?

A. Yes, sir.

Judge Henson: That is all.

(Witness excused.)

JOHN KOENIG, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. John Koenig.

Q.2. Where do you reside, Mr. Koenig? A. In Rutherford, New Jersey.

Q.3. What is your connection with the Royal Exchange Assurance group? A. I am the branch secretary of the United States branches of the Royal Exchange Assurance of London and the State Assurance Company, Ltd., of Liverpool, also secretary and treasurer of the Provident Fire Insurance Company, a New Hampshire corporation.

Q.4. What is the relationship of these insurance companies to each other? A. The Royal Exchange Assurance is the parent company and by stock ownership owns the State Assurance Company and the Provident Fire Insurance Company.

The Special Master: We are not so much interested in the ownership as we are the management and the control.

A. The United States manager and the assistant managers act for the foreign companies, the World Exchange Assurance Company and the State Exchange, Ltd., and also serve as president and vice-president of the Provident Fire Insurance Company.

The Special Master: Then they are under common management?

A. They are under common management.

Q.5. (By Senator Hollingsworth) And was that your connection with these companies in 1935 and 1936? A. My personal connection was, yes.

Q.6. Were you familiar with the general nature of the Missouri rate litigation? A. In a general way, yes.

Q.7. What agency handled that litigation for your company and the other companies? A. Well, I think most of the material came to us through the Subscribers' Actuarial Committee of Chicago.

Q.8. Did you know that it had active charge of the direction? A. I did have that impression yes.

Q.9. That is your impression. Now, did you receive notice of the compromise agreement that was made in May, of 1935? A. We did.

Q.10. How did you receive that? A. I believe it came to us through the Subscribers' Actuarial Committee.

Q.11. In the nature of a written communication of some kind? A. Yes.

Q.12. And did you learn through that the terms of the settlement? A. I did.

Q.13. That 20 per cent went to the policyholders? A. 20 per cent to the policyholders, yes.

Q.14. 50 per cent outright to the companies? A. Yes.

Q.15. 30 per cent was placed in the hands of Messrs. Folonie and Street? A. As trustees.

Q.16. For what purpose? A. I haven't the document here.

Q.17. Well, your recollection? A. My recollection is for litigation expenses.

Q.18. In payment of the expenses of the litigation?

The Special Master: All kinds of expense?

A. All kinds of expenses.

The Special Master: Court costs, attorneys' fees?

A. That was my impression, for all expenses incurred in connection with the suit.

The Special Master: Whatever they were?

A. Yes.

Q.19. (By Senator Hollingsworth) Then you further understood if there was any overplus in this 30 per cent fund, it would come to the companies after payment of expenses? A. At sometime, yes.

Q.20. You knew about the rendition of the federal court decree after that which was in February of 1936? A. Yes, I did.

Q.21. Did you receive a dividend from the 30 per cent fund at any time thereafter? A. I doubt that very much, although there is no definite information. We received funds returning specific payments we made in March, 1936.

Q.22. What was the first remittance that you received after the compromise? Do you have any records there before you that will refresh your recollection? A. I have not. But in the case of the Royal Exchange, I recall that they received about $50,000.00 Home Owners' Loan Bonds and a certain cash settlement from the custodian, and the other companies, the State Assurance Company and the Provident Fire Insurance Company received cash payments.

Q.23. That came from the custodian? A. That came from the custodian.

Q.24. Did you receive any money from the trustees out of the 30 per cent fund? A. I doubt that, from memory. Oh, excuse me.

Q.25. I wish— A. (Interrupting) I have this letter here from Mr. Street.

Q.26. What is the date of it? A. This is dated December 27, 1937, three there are, one for each company, and they read, "Enclosed check or checks will pay 5% of your Missouri impounded premiums as of May 1, 1935. It is a part of the expense fund held by Street and Folonie as Trustees."

Mr. Berger: That is dated December 27, 1937?

A. Yes.

Q.27. (By Senator Hollingsworth) Well, did you prior to that time receive a 6 per cent distribution out of that 30 per cent fund?

Mr. Berger: You are confusing here.

(Whereupon, discussion was had off the record.)

Mr. Berger: We will show by Mr. Folonie's and Mr. Street's books about all of those payments to this company.

Senator Hollingsworth: Well, let's mark this.

(Said letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 146, EFM.")

Q.28. I hand you Defendants' Exhibit 146, which I now introduce in evidence, a letter from Mr. C. R. Street dated March 31, 1936, in which he states, "I acknowledge the receipt of your check for $6,385.31, account Missouri litigation expense." A. Right.

Q.29. You had sent him a check, I presume, sometime shortly prior to that? A. Yes, there was a check issued.

Q.30. Who caused that check to be issued? A. The assistant manager, Mr. Edward W. Elwell.

The Special Master: Where is Mr. Elwell now?
A. Mr. Elwell is on vacation in England.
The Special Master: England?
A. Yes.

Q.31. (By Senator Hollingsworth) About when will he return? A. I should think the forepart of September.

Q.32. Did you receive any information as to how the check happened to be issued? Did Mr. Elwell discuss the matter with you? A. Merely that within two days of the issuance we were in doubt at the time, or my assistant was in doubt at the time, and he was told it was legal expenses.

Q.33. Do you know who told your assistant that? A. I don't know.

Q.34. Well, did you learn from your assistant or from any other person who made the call for the check? A. No, I don't know that.

Q.35. Now, you say that "we were in doubt." I wish you would just tell us what conversation was had there between you men in regard to this check. A. At the time this payment was made I was in Florida and my assistant was asked to countersign this check.

Q.36. You learned that from your assistant? A. I learned that from my assistant.

Q.37. Did he tell you who had asked for the check? A. No, he wouldn't know. You see, the company covers three floors.

Q.38. Well, did you talk with your assistant after you came back? A. I did.

Q.39. Give us all of the information that you got about the matter. A. That was to be prorated to legal expenses and the basis was the impounded premiums to April 30, 1935.

Q.40. He didn't tell you from whom he received the call for the check? A. No.

Q.41. You have no information other than some doubt existed about the matter in your mind? A. For two days, it seems from this record.

Q.42. For two days? A. Because the instruction then must have been to charge legal expenses.

Q.43. Did you handle the matter? A. I handled it in that manner.

Q.44. You say that for two days. Was that two days after you came back from Florida? A. No, I mean as far as the office routine was concerned.

Q.45. It was held in your office for two days because no one knew how to allocate it; is that right? A. That is the idea. The check had been issued and it was drawn to C. R. Street.

Q.46. Agent? A. No, not with "Agent."

Q.47. Just C. R. Street and then was it mailed to Mr. Street promptly upon its being signed? A. Why, my impression is that a messenger received it.

Q.48. That a messenger received it? A. Yes, or some representative. That is unknown to me.

Q.49. How did you get that information that a messenger came for it? A. Naturally, of course, we had discussions when I returned.

Q.50. What were the discussions? A. Simply that there was a check drawn in this Missouri litigation and they hadn't been able to apply it until they made inquiry.

Q.51. Did anyone tell you at that time that they had been told that it was for legal expenses, anyone in your office? A. My assistant would have been told, because that is in his own handwriting, the memorandum, "legal expenses."

Q.52. Did your assistant tell you he had not known for two days how to handle the matter? A. He did.

Q.53. And for that reason he had not made any entry on his books whatever, is that right? A. He had to make an entry but left space for a description.

The Special Master: He entered the amount and the date and the fact that the check was issued and to whom issued, but he did not make an entry of what it was for?

A. Exactly.

The Special Master: That is what you mean, isn't it?

A. Yes, that is exactly it.

Q.54. (By Senator Hollingsworth) All right, now, from whom did he receive information after that, if you know, from which he made the entry in regard to legal expenses? A. It must have come from Mr. Elwell.

The Special Master: Do you know anything about it?

A. I don't know positively.

Q.55. (By Senator Hollingsworth) Have you told us the extent of your knowledge concerning this matter? A. I have.

The Special Master: Who is your assistant, you say, Mr. Elwell?

A. He is the United States Manager now. He was assistant manager at that time.

The Special Master: He was the one you say handled it, so far as you know?

A. Yes, sir.

The Special Master: He is in England?

A. Yes, sir.

Q.56. (By Senator Hollingsworth) Who is your assistant? A. Mr. Harry Halprin.

The Special Master: Where is he?

A. He is in the office.

Senator Hollingsworth: That is all.

Mr. Bullitt: You personally had really nothing to do with this transaction?

A. No.

Mr. Bullitt: That is all.

(Witness excused.)

Senator Hollingsworth: Defendants' Exhibit 146 is offered in evidence in connection with the testimony of this witness.

(Which said Defendants' Exhibit 146, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

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WESTERN DEPARTMENT
310 SOUTH MICHIGAN AVENUE
POST OFFICE BOX 750
CHICAGO

Great American Insurance Company New York

C R STREET
VICE PRESIDENT
G D GREGORY
SECRETARY

CHICAGO March 31, 1938.

Royal Exchange Assurance

Royal Exchange Assurance,
111 John Street,
New York, N. Y.

Gentlemen:

I acknowledge the receipt of your check for $6,385.31, account Missouri litigation expense.

Yours very truly,

C R Street

D 146

P

LAURENS R. BOWDEN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Laurens R. Bowden.

Q.2. Where do you reside? A. Reside here in New York City.

Q.3. What is your connection with Bankers and Shippers Insurance Company group? A. I am first vice-president.

Q.4. And that group consists of Bankers and Shippers Insurance Company, New Jersey Insurance Company and Pacific Fire Insurance Company? A. The New Jersey is now the Jersey. The name has been changed. At least the Jersey is taking over the New Jersey.

Q.5. When did that happen? A. That happened six or seven months ago.

Q.6. But the companies as I have listed them were in existence in 1935 and 1936? A. Yes, and the Jersey is continuing the old New Jersey.

Q.7. What was your connection with these companies in 1935 and 1936? A. I was first vice-president.

Q.8. And as such were you the man in the office who had knowledge concerning the Missouri rate litigation? A. I was.

Q.9. You handled the matters that came into the office in connection with it? A. As much as anybody in the office.

Q.10. Of course, you knew of the settlement in 1935? A. Yes, I did.

Q.11. And did you know of the terms of it? A. Yes, in a general way.

Q.12. You knew that 20 per cent went to the policyholders? A. Yes.

Q.13. 50 per cent outright to the companies? A. Right.

Q.14. And 30 per cent was set up in a trust fund for the payment of litigation expenses? A. I knew those terms.

Q.15. Now, what expenses did the 30 per cent fund cover? Was it litigation expenses? A. It was for litigation expenses to cover, as I remember it, all expenses incurred by the state and by the companies.

Q.16. In connection with the litigation? A. In connection with this matter.

Q.17. At the time this compromise agreement was signed or about that time, did you receive any information in regard to the $100,000.00 fund being raised? A. No, we did not.

Q.18. After the compromise agreement you knew that a federal court decree was entered? A. Yes.

Q.19. Then after that you received the greater part of the 50 per cent from the custodian, did you not? A. Right.

Q.20. Then did you thereafter receive any part of the 30 per cent fund? A. Yes, we received 11 per cent and paid back 5 per cent.

Q.21. From whom did you receive the check for 11 per cent? A. I was given the check by Mr. Erskine of the Insurance Executives' Association. He delivered the check to me personally.

Q.22. At your office? A. At my office.

Q.23. Now, at that time did you have a conversation with Mr. Erskine? A. In a general way. I can't recollect the full conversation, but I had a general conversation with him.

Q.24. Well, at that time did he ask you for a 5 per cent check, 5 per cent of the impounded premium? A. He did.

Q.25. Tell us as fully as you can everything that he said to you? A. He said that he had a check for 11 per cent of the amount we had impounded. That was a returned expense check, but he still wanted another check given to him for 5 per cent. He wanted to trade the 11 per cent for a 5 per cent check, which would net us 6 per cent. I asked him in a general way what the 5 per cent was for, and as near as I can recollect he told me for further attorney fees. I don't remember in detail at all, but whatever I asked him convinced me that it was all right for me to issue the check.

Q.26. Well, did he tell you that the 30 per cent fund had been exhausted? A. I don't recall his telling me that.

Q.27. Well, you knew that 30 per cent was there for the payment of expenses? A. Surely, I knew that.

Q.28. Did you ask him why he was trading you, giving you 11 per cent and exacting from you 5 per cent instead of simply giving you a straight 6 per cent check?

A. I don't recall asking him anything specifically like that, and I think our conversation was more general.

Q.29. Did the thought occur to you that that was an unusual way and a cumbersome way of handling it? A. I don't think it did.

Q.30. It never occurred to you in any way? A. I don't think it did.

Q.31. Did he tell you to whom the check should be made? A. Yes, he did.

Q.32. To whom? A. He gave me the option of making the check to Mr. Street or to Mr. Folonie as agent.

Q.33. As agent? A. As agent.

Q.34. Agent for whom? A. Well, agent.

Q.35. Well, for whom? A. I don't think I went into it very far. It didn't make a tremendous impression on me.

Q.36. You selected R. J. Folonie, agent? A. I selected Mr. Folonie.

Q.37. And why did you select Folonie instead of Street? A. Because Folonie has been our attorney for a number of years in other matters. I knew him very well. I didn't know Mr. Street at all, never knew him.

Q.38. And you made it then to Mr. Folonie, Agent? A. I made it to Mr. Folonie.

Q.39. Mr. Erskine is secretary to Mr. Haid? A. Yes, I understand.

Q.40. Of Mr. Haid's Association of Insurance Executives? A. Yes.

(Photostatic copies of checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 147, 148 and 149, EFM.")

Q.41. What did Mr. Erskine say to you about immediate need for the check? A. I don't think he said anything about it. Well, wait a minute, perhaps I misunderstood you. He wanted the check right away that day.

Q.42. He wanted it right away? A. He wanted it right away.

Q.43. You issued checks or caused checks to be issued for all three of your companies? A. I did.

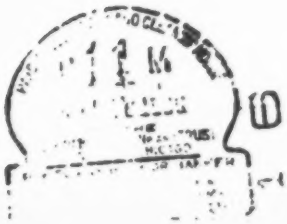
Q.44. For the respective amounts of their 5 per cent? A. For the 5 per cent.

Q.45. Now, I show you Defendants' Exhibit 147, 148 and 149, which I now offer in evidence. Please state

if those are photostatic copies of the checks. A. They are photostatic copies of the checks that I issued and signed. That is my signature.

Q.46. They are dated March 24, 1936, all of them? A. Yes.

(Which said Defendants' Exhibits 147, 148 and 149, so offered in evidence, having been previously duly marked, are in words and figures as follows:)



PACIFIC FIRE INSURANCE CO

THE NEW YORK TRUST COMPANY
100 BROADWAY

No. 14545 NEW YORK Nov 24 1926

PAY TO THE ORDER OF R J Folmer Agent $1602 17

THE SUM OF $1602 AND 17 CTS DOLLARS

PACIFIC FIRE INSURANCE CO.

SECRETARY

VICE PRESIDENT

D 147

BANKERS & SHIPPERS INSURANCE COMPANY OF N. Y.

NEW YORK Jan 24 1936 No. 7939

THE CHASE NATIONAL BANK

...ROC ...THE CHASE BANK BROADWAY, NEW YORK

PAY TO THE ORDER OF R J Folonie, Agent. $2060 97

SUM OF $ 2060 AND 97/100

DOLLARS

Bankers & Shippers Insurance Company of New York

Secretary

Pay to the order of C. R. Street. R J Folonie Agent

R J DEPOSIT WITH CITY NATIONAL BANK ... CHARLES R. STREET ...

2148

New York Mar 24 1916 No. 6916

BANKERS TRUST COMPANY

NEW JERSEY INSURANCE COMPANY
GENERAL ACCOUNT

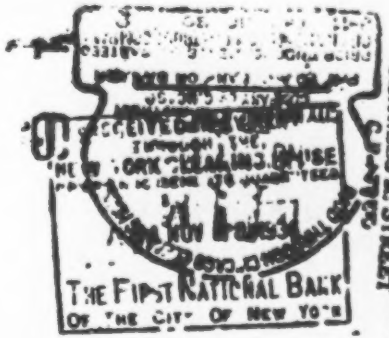
PAY TO THE ORDER OF R J Tolman, Agent $1402.27

SUM OF $1402 AND 27 CTS.

NEW JERSEY INSURANCE COMPANY - GENERAL ACCOUNT

M Clapper SECRETARY

VICE-PRESIDENT



R J Tolman Agent

Q.47. You gave those to Mr. Erskine? A. Yes, sir.

Q.48. At the time of the issuance of the checks did you cause a requisition to be issued? A. I didn't quite follow that.

Q.49. At the time of the issuance of the checks, did you have a requisition issued for them? A. You mean in our office?

Q.50. Yes. A. I presume we went through the usual course. Just what it was, I have forgotten, or just what it is, I have forgotten.

Q.51. Would you turn in the file and select the papers?

Mr. Bullitt: Just show him the request for check.

Senator Hollingsworth: There is one. I want to see if there is another.

Mr. Bullitt: They are all three there.

Senator Hollingsworth: That is a memorandum of a receipt.

Mr. Bullitt: No, it is further on his request for a check.

Senator Hollingsworth: All right, General, we will get to it.

Mr. Bullitt: They are all there. There is one a little bit later, and they are all there.

Senator Hollingsworth: Let's get them here.

The Special Master: Just a minute, let him find the exhibits first. It is so much easier to read if we get it all together.

(Check requisitions, handed to the reporter, were marked for identification as "Defendants' Exhibits 150, 151 and 152, EFM.")

Q.52. Now, I show you Defendants' Exhibits 150, 151 and 152, and ask you to state if they are the requisitions for these checks. A. Now, these are the forms that we use in our office.

Q.53. Well, you look at them and see if they are. A. They apparently are for these checks.

Q.54. Now, I notice that the—

The Special Master: Do you offer those in evidence?

Senator Hollingsworth: Yes, I offer those in evidence.

(Which said Defendants' Exhibits 150, 151 and 152, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

PA FIC FIRE INSURANCE)MPANY

REQUEST FOR CHECK

March 24, 36.

TO THE ORDER OF R. J. Falonie, agent

ADDRESS

AMOUNT $ 1602.17 CK. # 14545

IN PAYMENT OF:

Rx # 308

Nov 1936

DATE	POLICY NO. AGENTS A/C	PREMIUM	✓	COMMISSION %	COMMISSION AMOUNT	NET BALANCE

Agcy DEPT.

REQUESTED BY W. F. Zumbro

APPROVED BY

DATE 3/24

ENTRY NO. 5283

BY M.J.

D 150

84

w Jersey Insurance Comp:

MEMORANDUM OF RECEIPT

TO _____ DEPT. 3/25 19__

FROM R. F. Polonie

AGENCY _____

AMOUNT $ 3085 00 CK. NO 230 CK. DATE 3/9

DATE	POLICY NO. AGENTS A C	PREMIUM		COMMISSION %	COMMISSION AMOUNT	NET BALANCE
	Missouri Comp Custodian					
		3085 00				

ENTERED ON BKGE. COLL. CARDS

DATE _____

BY _____

11-39

DATE 3/25

ENTRY NO. 3838

BY RR

84

8-15

95

New Jersey Insurance Company

REQUEST FOR CHECK

March 24 19 36

TO THE ORDER OF R. J. Folonie, agent

AMOUNT $ 146227 CK # 6916

IN PAYMENT OF:

Draft # 3
Mar

DATE	POLICY NO. AGENTS A/C	PREMIUM		F	COMMISSION %	COMMISSION AMOUNT	NET BALANCE	

Agcy DEPT.

REQUESTED BY [illegible]

APPROVED BY [illegible]
DEPT. HEAD

DATE 3/24

ENTRY NO 3821

BY [illegible]

P.157 C84

Q.55. Now, do either of those requisitions show the purpose for which the money is to be used, other than Missouri impoundings? A. No.

Q.56. You notice those checks are dated March, 1936. I call your attention to the endorsement of them, "Pay to the order of C. R. Street, R. J. Folonie, agent." Do you see that, all three of them? A. Yes, sir.

Q.57. I call your attention to the "Paid" stamp of the bank. It shows that these checks were cleared in November, November 17, 1936. A. Yes, sir.

Q.58. Did it come to your attention between March of 1936 and November of 1936 that these checks were still outstanding? A. It did not.

Q.59. No one called that to your attention? A. Nobody.

Q.60. Do you know of any reason now why those checks were held during that period of time? A. I haven't the slightest idea.

Q.61. Has it ever been called to your attention before? A. Never had. It was called to my attention when we heard in the newspapers or we read in the newspapers of this scandal within three or four months, and we immediately went down in our files and got these checks up.

Q.62. For the purpose of finding out what your files revealed? A. Exactly.

Q.63. You then learned for the first time that these checks had not been cashed for some six months? A. Correct.

Q.64. After their issuance.

(Photostatic copy of record entry, handed to the reporter, was marked for identification as "Defendants' Exhibit 153, EFM.")

Q.65. I hand you Defendants' Exhibit 153, which I now offer in evidence, and ask you to state if that is a photostatic copy from your records. A. It looks like our form, but these things do not come before me. I wouldn't know anything about it.

(Which said Defendants' Exhibit 153, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Defendants' Exhibit No. D 153 is page from the records of PACIFIC FIRE INSURANCE COMPANY entitled "Missouri Impound Custodian," showing, among other entries, March 24, 1936—

"Legal fees R. J. Folonie $1,602.17"

also an entry on March 25, 1936—

"Refund—legal fees $3,524.78"

Q.66. Well, you see here an entry on Defendants' Exhibit 153, "R. J. Folonie, $1,602.17"? A. Yes.

Q.67. Down here you see, "Refund legal fees, $3,524.78"? A. Yes.

Q.68. Now, isn't it a fact that these words "legal fees" were written in there at a time different from the regular entry? A. Not to the best of my knowledge.

Q.69. Well, it is different writing is it not? A. It looks like it.

Q.70. Written there at a different time or with a different pencil at least? A. It looks like it.

Q.71. Do you have any explanation of the fact? A. I haven't.

Q.72. That the words "legal fees" apparently were written at a different time from the "R. J. Folonie, $1,602.17"? A. I haven't any.

Q.73. And down here, these words "legal fees" were written at a different time from the word "refund," weren't they? A. Apparently.

Q.74. Do you have any explanation as to why that happened? A. I haven't.

Q.75. Now, your requisitions do not mention legal fees, do they? A. No, they do not.

Q.76. That is typical of one, isn't it? A. Typical?

The Special Master: Tell him what you referred to.

A. I am referring to Defendants' Exhibit 152.

Q.77. (By Senator Hollingsworth) That is typical for the other companies, isn't it? A. Yes, it is our regular form.

Q.78. And it doesn't mention anything about what this check is for? A. No, it does not.

Q.79. Well, when you went down following the newspaper story to see what your files revealed, did you come across this apparent peculiarity in your records showing the words "legal fees" to have been written at a different time? A. No, I did not.

Q.80. From the original entry? A. That is the first time it has been called to my attention.

Q.81. You have no explanation of it now? A. None.

Q.82. But you will concede that it was written at a different time? A. I won't concede that, no.

Q.83. Well, it apparently is that way, isn't it? A. Well, they look like different writing but perhaps it isn't. I am not prepared to say.

The Special Master: Let's clear it up. Do you know any more about that than just what I can tell by looking at it?

A. No.

The Special Master: Well, I can see it.

Q.84. (By Senator Hollingsworth) Then you have here on your books quite a number of other entries in regard to legal matters, with the exception of these two entries, the words "legal fees" that I have just shown you, haven't you used the words "legal expense" all the way through? A. I haven't any explanation for that.

Q.85. But you do find a number of entries here in other matters where the words "legal expense" are used, do you not? A. Well, I can see where there could be some difference in the different entries there. We used the words "legal expense" in connection with losses, and a matter of this kind might be "legal fee," might be something specific.

Q.86. Did you understand that you were paying a specific legal fee at the time you issued the R. J. Folonie check? A. I did not.

Q.87. When you made them to R. J. Folonie, Agent, you knew, did you not, that it was not a disbursement to Mr. Folonie for attorneys' fees? A. Absolutely.

Q.88. And you had no information whatever as to whom the attorneys' fees were to be paid? A. I did not.

Q.89. Or legal fees. Did you ever at any time thereafter talk to Mr. Folonie about the matter? A. I never did. I haven't seen him since that time or sometime before that.

Q.90. Did you ever talk to Mr. Street about the matter? A. I never met Mr. Street.

Q.91. Have you since that time talked to Mr. Erskine about the matter? A. I never have talked to Mr. Erskine since that time.

Q.92. Sir? A. Not since that time.

Q.93. Have you talked to Mr. Haid? A. I have not.

Q.94. Did you attend a meeting of insurance executives here in 1935? A. I did not. I presume you mean a meeting in regard to this case?

Q.95. Yes. A. I did not.

Q.96. Or the raising of any money in connection with it? A. I did not.

Q.97. Did you attend any meeting of the insurance executives where a proposed settlement was discussed? A. I did not. We are not a member of the Insurance Executives' Association. I didn't or nobody in our outfit did.

The Special Master: When Mr. Erskine called you then he didn't call you as a representative of your company? You didn't belong to the association, is that right?

A. Absolutely.

The Special Master: You just knew who he was?

A. I just knew who he was and knew him by reputation.

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.98. Were any of your group members of the Subscribers' Actuarial Committee or the Insurance Executives' Association? A. They were not.

XQ.99. As far as you know, did Mr. Meserole or Mr. Matthews or Mr. Crapser know nothing about this situation? A. Only in a superficial way. None of us know anything about it.

XQ.100. Did you ever know Mr. Pendergast, T. J. Pendergast, or Mr. A. L. McCormack or Mr. O'Malley? A. I never knew Mr. Pendergast and I never knew Mr. O'Malley. I did know Mr. McCormack.

XQ.101. Did you ever by letter or telephone or telegraph or by personal contact discuss in any way with Mr. Pendergast, Mr. O'Malley or Mr. McCormack the Missouri rate situation or the litigation or any settlement? A. I never did.

XQ.102. As your checks to Mr. Folonie were not cashed until November, 1936, did any of the money of any of your companies go to Mr. Pendergast or Mr. O'Malley or Mr. McCormack?

The Special Master: Well, he doesn't know that.

A. Certainly not with my knowledge.

Mr. Bullitt: Well, it couldn't have gone, because it is already shown.

The Special Master: That is a good argument, but he is not a competent witness.

Mr. Bullitt: Well, of course, he doesn't know actually.

XQ.103. Did any of your companies ever request Mr. Street to act for you in any way concerning the Missouri rate litigation? A. We never requested him in any way to act for us.

XQ.104. Did any of your companies ever authorize or request Mr. Street to pay any money for bribery to induce anybody to settle this case? A. Absolutely not.

XQ.105. You knew, didn't you, that Mr. Folonie or his firm were acting for you as attorneys in the Missouri litigation? A. Yes, sir.

XQ.106. What is the reason that you had these checks made to R. J. Folonie, Agent, instead of to C. R. Street? A. I just testified that I knew Mr. Folonie and had known him for some years. I did not know Mr. Street.

The Special Master: And he also said that Mr. Folonie was their attorney.

Mr. Bullitt: Yes, I know.

A. In other matters Mr. Folonie was our attorney.

XQ.107. (By Mr. Bullitt) Just to clear up my own mind, because I am sort of ignorant about these things, look at Defendants' Exhibit 153 that Mr. Hollingsworth has been examining you about. You have it in front of you now, have you? A. I have.

XQ.108. I notice that the heading of the column of the entry as a sample of $1,602.17 is "Cash Received." You didn't receive any $1,602.17, did you, from Mr. Folonie? Explain that. I know the explanation, but I want you to give it. A. Really, I am not an accountant and you can confuse me very easily on it. I really don't know.

The Special Master: Do you know what happened?

XQ.109. (By Mr. Bullitt) Well, you paid Mr. Folonie as agent, a check of $1,602.17 dated March 24, 1936, marked Defendants' Exhibit 147, didn't you? A. Yes, sir.

XQ.110. Then the Defendants' Exhibit 153 is a photostat of a page in your books, isn't it? A. Yes, sir, apparently.

XQ.111. And the entry that Mr. Hollingsworth has asked you about as having the words "legal fees" inserted in it after the words "R. J. Folonie" were written,

is not on any sheet of paying out money, but on a sheet of cash received, isn't it?

Senator Hollingsworth: That is received on the general setup.

Mr. Bullitt: How is that?

Senator Hollingsworth: That was received on the general setup. They set up that Missouri impounding.

(Whereupon, discussion was had off the record.)

A. There is probably a very clear, easy explanation of all these things.

XQ.112. (By Mr. Bullitt) But you are not an accountant? A. I am not an accountant, and I don't know anything about it.

XQ.113. Let's look at these three photostats headed "Memorandum of Receipt." Are they the memorandums in your office of the receipt of the money that you got from the custodian? A. I am not prepared to say. I am not familiar enough with the bookkeeping in our office to tell just exactly what they do mean.

XQ.114. I understand. Each one of those papers, however, described as a memorandum of receipt, shows that it comes "From R. J. Folonie," doesn't it? A. That is the way it shows here.

XQ.115. But you don't know anything about that at all? A. I questioned something of this kind in my office yesterday about these checks and I thought the check for 11 per cent came from Folonie and Street, but our record shows it came from R. J. Folonie. The explanation of that was this: The general custom in our office when we enter a check, if it is in two or three names we enter just the first name.

The Special Master: In other words, you just make a key but you don't go ahead and make a full entry?

A. We don't make a full entry at all. We just make a reference to it.

XQ.116. (By Mr. Bullitt) It is a fact, isn't it, that when you got this request from Mr. Erskine to make a check for 5 per cent out of the 30 per cent you were going to receive a portion of, you made it to Mr. Folonie because he was your attorney? A. Yes, sir.

XQ.117. And this was the case in which he was your attorney, and when you were asked to put up some money you paid it to your attorney at law who had charge of the case?

Judge Henson: That is repetition.

A. No, I don't think in that case I considered him our attorney. I considered he was our attorney before and I knew he was a lawyer and he was our attorney in the general case.

XQ.118. (By Mr. Bullitt) When you got this money back, you paid it to him? A. We were very glad to get it back.

Mr. Bullitt: That is all.

The Special Master: Now, did you ever get your case instituted in the federal court? Your company did bring a suit in the federal court and you didn't belong to the Executive Association, you didn't know Mr. Street, you had no connection with the Actuarial Committee; what did your company ever do to get it started? Did somebody just take it upon themselves to bring a lawsuit without your consent?

A. No, I am not quite clear in this particular case, but there have been a number of companies where the Actuarial Committee acted, and when they asked if we would go along, it was the only practical thing for us to go.

The Special Master: Did they ask you if you would go along?

A. I presume they did. I can't find anything in my file which would definitely say yes.

The Special Master: But you knew you did have a lawsuit?

A. We knew we had a lawsuit, certainly.

XQ.119. (By Mr. Bullitt) Isn't this a fact that this suit was brought in the name of your companies out in Missouri, and that the Western Inspection Bureau wrote you and told you they had brought this suit and you just acquiesced? A. Not the Western.

XQ.120. But the Missouri Inspection Bureau? A. No.

XQ.121. Are you a member of that? A. Yes, we are a member of the Missouri Inspection Bureau.

XQ.122. Isn't it a fact the Missouri inspection Bureau notified you a suit had been brought in your name involving this sixteen and two-thirds percent rate increase, and with that knowledge you just acquiesced? A. I am not prepared to answer that question.

The Special Master: All you know is that you knew you had a lawsuit?

A. We knew we had a lawsuit and we followed along with the Actuarial Committee. It was the only practical way for us to do.

Mr. Bullitt: That is all.

Re-Direct Examination by Senator Hollingsworth.

RDQ.123. When you received the 11 per cent you were glad to receive it and keep it? A. We certainly were.

RDQ.124. And, of course, you kept the 50 per cent also received from the custodians? A. Yes, we got it and we didn't get it. A lot of it went back to agents, etc.

RDQ.125. You disbursed it out on your liability? A. Yes. We only got very little.

(Witness excused.)

HARRY HALPRIN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Harry Halprin.

Q.2. Mr. Halprin, what was your connection in 1935 and 1936 with the Royal Exchange Assurance group? A. Assistant secretary and assistant branch secretary.

Q.3. And your superior officer was Mr.— A. (Interrupting) John Koenig.

Q.4. Do you recall that in March, 1936, you were called upon to issue a check to Mr. C. R. Street? A. I do.

Q.5. Did you issue the Royal Exchange Assurance check for both of your companies? A. Three of them.

Q.6. Or three of them? A. Yes.

(Photostatic copy of check, handed to the reporter, was marked for identification as "Defendants' Exhibit 154, EFM.")

Q.7. I hand you Defendants' Exhibit 154, which I now offer in evidence. Please state if that is a photostatic copy of a check and endorsements? A. It is.

(Which said Defendants' Exhibit 154, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

No. 168057

The Royal Exchange Assurance
of London.
United States Branch
New York MAR 23 1936

Pay to the order of C. D. Street

$385 100 31 CTS

To Central Hanover Bank and Trust Company
William Street at Fulton Street
New York

Countersigned Henry Schlesinger
Broker's Agent

EXAMINED
AUDITORS

Assistant Manager

RECEIVED PAYMENT
THROUGH NEW YORK CLEARING HOUSE
PRIOR ENDORSEMENTS GUARANTEED
MAR 25 1936
CHASE NATIONAL BANK
NEW YORK
No. 74

2 (36) N

FOR DEPOSIT WITH
CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

4b

Q.8. You countersigned, I believe, as branch secretary? A. That is right, for the branch secretary.

Q.9. For the sum of $6,385.31? A. That is right.

Q.10. Does that represent 5 per cent of the impounded premiums of your group? A. It does.

Q.11. In the Missouri rate litigation? A. That is right.

Q.12. At the time you issued that check who directed you to issue it? A. The assistant manager, Mr. E. E. Elwell.

Q.13. What, if anything, did Mr. Elwell tell you about it? A. He didn't say anything, just said it was in connection with Missouri.

Q.14. Missouri what? A. The Missouri impounded premiums.

Q.15. Was there a requisition for the check? A. I made the requisition.

Q.16. Do you have it there with you? A. No, I have not. I think it is amongst the papers there.

Q.17. Here is the file that was handed me. See if you find a requisition in it. A. It is part of a book, so I guess it probably wasn't photographed. Requisitions were made in the book.

Q.18. Kept in permanent bound book? A. We still have that. I looked at it this morning.

Q.19. You looked at it this morning? A. Yes.

Q.20. What does it say on it? A. It just says, "Pay to C. R. Street" and the amount.

Q.21. Pay to C. R. Street? A. That is right, and the amount, and I don't know whether I initialed it or the cashier.

Q.22. Well, is the purpose for which the check is issued on there? A. No.

Q.23. Is it customary for you to put it on there? A. No.

Q.24. On your requisitions? A. No, we just say "As per statement" or something like that.

Q.25. "As per statement"? A. That is right.

Q.26. Well, of course, you attach the statement to the check requisition? A. Yes.

Q.27. Where you issue a check and don't have any statement, don't you write it on the requisition? A. No.

Q.28. So if you issue a check without a requisition, you don't have any record what it is for? A. We have to make an entry in the cash book so that is practically the entry.

Q.29. You say that Mr. Elwell told you nothing? A. That is right.

Q.30. You didn't know what it was for? A. Not at that date.

Q.31. Well, did you make your book entry after the issuance of the check? A. That is right.

Q.32. Did you make a full and complete book entry at that time? A. That is right, yes.

Q.33. When was it that you learned anything about the purpose of the check? A. I never learned what the purpose was, but I did know how it was arrived at. That is all. I never did know.

Q.34. Do you recall that Mr. Koenig came back from Florida about that time or shortly after the issuance of the check? A. Yes.

Q.35. Do you recall he asked you or you asked him about the check? A. That is right.

Q.36. What was said between you and Mr. Koenig? A. Well, he didn't know what it was for.

Q.37. He didn't know? A. No, that is what I asked him and he said he didn't know.

Q.38. Why didn't you ask Mr. Elwell? A. Well, I did.

Q.39. You did? A. He didn't say anything.

Q.40. You asked Mr. Elwell and he didn't say anything? A. That is right.

Q.41. In other words, when you issued the check, if I understand you, Mr. Elwell didn't tell you anything? A. That is right.

Q.42. Mr. Koenig came back and he asked you what the check was for? A. That is right.

Q.43. You told him you didn't know? A. That is right.

Q.44. Then you went to Mr. Elwell? A. No, I didn't go. I went before.

Q.45. You went before? A. Yes.

Q.46. You mean before Mr. Koenig came back? A. Yes.

Q.47. You went back to Mr. Elwell to find out what it was about? A. That is right, after I issued the check.

Q.48. And you said, "What is this for?" A. That is right.

Q.49. What did he say? A. He said he didn't know —I don't know the exact words, but he said something like he would let me know.

Q.50. He would let you know? A. That is right.

Q.51. That is all the information he gave you? A. That is right.

Q.52. Did you make an entry on your book? A. Yes.

Q.53. Did your entry recite— A. (Interrupting) Well, I haven't the amount, and knowing the setup of the figures I was able to dope out what that represented.

Q.54. Well, it represented what? A. What?

Q.55. 5 per cent of the premiums? A. That is right.

Q.56. But did you make your entry on the book as to what the check was for? A. Well, I set it up as legal expenses.

Q.57. You didn't know what it was? A. No.

Q.58. You had asked Mr. Elwell? A. Well, then in the insurance business it couldn't be anything else.

Q.59. I know, but you asked Mr. Elwell? A. Yes. Well, after all, I have full authority.

Q.60. Well, you asked Mr. Elwell, did you? A. Yes.

Q.61. Mr. Elwell was your superior officer, wasn't he? A. Yes.

Q.62. He told you he would tell you later? A. That is right.

Q.63. Then you set it up as legal expense? A. That is right.

Q.64. You didn't know it was legal expense? A. No.

Q.65. And, as a matter of fact, you had been so curious that you had asked and hadn't gotten any information? A. That is right.

Q.66. But you set it up as legal expense? A. That is right.

Q.67. All right, show me the book where you made your first entry now, the page, the very first entry you made. A. I didn't make it personally, but it is in here.

Q.68. Well, you caused it to be made? A. Yes.

Q.69. Where is the first entry? A. Right here (indicating).

(Said ledger entry, handed to the reporter, was marked for identification as "Defendants' Exhibit 155, EFM.")

Q.70. I hand you Defendants' Exhibit 155, which I now offer in evidence, and ask you to state if that page from your books entitled "First Disbursements, Royal Exchange Assurance" and under date of March 25th con-

tains the entry that you made at that time. A. That is right.

(Which said Defendants' Exhibit 155, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Defendants' Exhibit No. D 155 is page from the records of ROYAL EXCHANGE ASSURANCE entitled "Disbursements" which, among other entries, shows on March 25, 1936, C. R. Street, Legal Expense R Mo Rate Litigation showing payment of check (Defendants' Exhibit No. D 154) as divided between ROYAL EXCHANGE ASSURANCE, PROVIDENT FIRE INSURANCE COMPANY and STATE ASSURANCE COMPANY, LTD., in amount $6,385.31.

Q.71. Now, that reads "C. R. Street, Legal Expense"? A. Right.

Q.72. "R. Mo." A. Rate litigation.

Q.73. What is this? A. That is another entry.

Q.74. Then it is broken down here for the companies? A. That is right. This is the Royal over here (indicating).

Q.75. Then the amounts are broken down and the check numbers are issued? A. Yes, sir.

Q.76. At the time you made this entry you knew that or thought you would get information from Mr. Elwell as to what it was for? A. That is right.

Q.77. Why didn't you wait until you got the information? A. Well, I didn't have to wait because I could set it up myself.

Q.78. Well, you thought you needed the information when you went to Mr. Elwell, didn't you? A. At that time, yes.

Q.79. Well, you went to Mr. Elwell and he told you he would tell you later? A. Yes.

Q.80. Then you took it on yourself to set it up although you didn't know what it was for? A. That is right.

Q.81. Well, did Mr. Elwell ever tell you? A. No.

Q.82. Did you ever go back to him? A. No.

Q.83. And to this date you don't know what it is for? A. I don't know what it is.

Q.84. You never knew either through Mr. Elwell or any other person? A. That is right.

Q.85. Who called for the check? A. Mr. Elwell himself.

Q.86. Mr. Elwell himself? A. By telephone. We are on a different floor.

Q.87. And he telephoned down? A. Telephoned down.

Q.88. Did Mr. Elwell tell you to whom he had talked? A. No.

Q.89. Now, are these companies managed under the same office? A. Yes, the same office.

Q.90. It is all done by one bookkeeping operation? A. Yes.

Mr. Berger: The entry he pointed out, pointed that out.

A. Yes, it is one check and broken down.

Q.91. (By Senator Hollingsworth) Let's see, when Mr. Koenig came back he asked you about it? A. Yes.

Q.92. What was it you told him? A. Well, I explained to him we had a check and what I did and he seemed to be satisfied.

Q.93. Well, did he tell you that Mr. Elwell had told you he would let you know later, or words to that effect? A. I probably mentioned that to him, but that is all.

Q.94. And he seemed to be satisfied? A. That is right. He made a little entry on the sheet here and that was that.

Q.95. Do you know whether Mr. Koenig went to Mr. Elwell? A. I do not.

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.96. At the time that you sent these checks to Mr. Street—

The Special Master: He didn't do that.

XQ.97. (By Mr. Bullitt) All right, at the time these checks were sent to Mr. Street for this 5 per cent, they were contemporaneously entered on your records of the different companies of your group for legal services or legal expense? A. That is right.

XQ.98. And Mr. Street acknowledged the receipt? A. Yes.

XQ.99. Of the check for $6,385.31 in a letter dated March 31, 1936? A. That is right.

The Special Master: The question is in making those entries, what does the man think happened? The question is, what did he know?

XQ.100. (By Mr. Bullitt) Do you know Mr. Pendergast or Mr. O'Malley or Mr. McCormack? A. No, sir.

XQ.101. Did you ever have any communication with them by telephone, telegram, letter or personal contact? A. No, none whatsoever.

XQ.102. All you know is that you were asked by Mr. Elwell to pay this? A. Yes.

XQ.103. He will be back the first of September, is that right? A. About that time.

XQ.104. He is now in Europe? A. Yes.

Mr. Bullitt: That is all.

Senator Hollingsworth: When did he leave for Europe?

A. June 30th.

Senator Hollingsworth: You mean he sailed on June 30th?

A. Yes, on June 30th.

(Witness excused.)

HERMAN L. WILKINS, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. State your name, please. A. Herman L. Wilkins.

Q.2. Mr. Wilkins, what official position do you hold with the Importers & Exporters? A. I am not with the Importers any more.

Q.3. You were in 1935 and 1936? A. I was.

Q.4. When did your connection end with them? A. April 30, 1937.

Q.5. During the time you were with them did you have any knowledge or information regarding the Missouri rate litigation? A. Yes.

Q.6. Did you handle that litigation in your office for that company? A. The records of it, yes.

Q.7. Did you say what official position you held with them? A. No, I did not.

Q.8. What was that? A. Secretary-treasurer.

Q.9. Do you know who handled this litigation for all of the companies? A. Street and Folonie, or, pardon me, Hicks and Folonie.

Q.10. Hicks and Folonie having been employed by the Subscribers' Actuarial Committee? A. Yes, sir.

Q.11. You knew, of course, that Mr. Street was very active in handling this litigation? A. No, I did not.

Q.12. You didn't know that? A. No.

Q.13. Did you know Mr. Street? A. No.

Q.14. But the Subscribers' Actuarial Committee handled this litigation as agent for the companies? A. That is correct.

Q.15. And employed Hicks and Folonie and other attorneys to represent the company? A. That is right.

Q.16. You knew that and understood it? A. Yes.

Q.17. Made no objection to it? A. That is right.

Q.18. Now, did it come to your knowledge that about May, 1935, an agreement had been entered into to settle this litigation? A. Yes.

Q.19. Do you know the terms of that agreement in a general way? A. Only that it was to be—the impounded moneys were to be given 20 per cent to the policyholders, 50 per cent to the companies and 30 per cent to the trustees, Street and Folonie.

Q.20. And this 30 per cent that was paid to the trustees was for the purpose of paying all expenses, including court costs and attorney fees and the balance, if any remaining, was to be distributed among the companies? A. That is the way I understood it.

Q.21. That is right. Now, did you get that information through a letter or by talking with someone or reading about it?

Mr. Holman: That makes no difference, I will withdraw that.

A. I don't just remember.

Q.22. It makes no difference. Now, this settlement that was arranged was satisfactory to your company, that is, you made no objection? A. We made no objection to it.

Q.23. You understood that your case, along with all of the rest of them, was being settled? A. That is right.

Q.24. Did you become advised that in February, 1936, the federal court in Kansas City approved this settlement and entered this decree? A. Yes.

(Photostatic copy of check, handed to the reporter, was marked for identification as "Defendants' Exhibit 156, EFM.")

Q.25. I hand you Defendants' Exhibit 156, which I now offer in evidence, and will ask you to explain just what that is, if you know. A. It is a check of the Importers and Exporters Insurance Company drawn to the order of C. R. Street, Agent, for $2,482.25.

(Which said Defendants' Exhibit 156, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

THE IMPORTERS—EXPORTERS INSURANCE COMPANY

CHECK NO. BM12812 VOUCHER NO. 47171

90 WILLIAM ST.

NEW YORK March 25 193 6

PAY TO THE ORDER OF C. R. STREET, AGENT $2,482.25

TWO THOUSAND FOUR HUNDRED EIGHTY TWO DOLLARS TWENTY FIVE CENTS

IN FULL PAYMENT OF ACCOUNT STATED IN VOUCHER OF CORRESPONDING NUMBERS DUPLICATE OF WHICH IS RENDERED HEREWITH

Bank of the Manhattan Company

40 WALL STREET, NEW YORK

FOR DEPOSIT WITH CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

RECEIVED PAYMENT THROUGH THE CLEARING HOUSE

MAR 26 1936

E01

Q.26. You were one of the officers signing that check, were you not? A. That is right.

Q.27. Can you explain to the Court how that check happened to be issued? A. Yes. Mr. Erskine of the Insurance Executive Association came to see me and had a check from Street and Folonie for 11 per cent. He asked me for a check for 5 per cent.

Q.28. Is that all he said? A. I asked him what the check was for, the check that he requested, and he said he didn't know, that the request had been passed on to him and he was just asked to get this check, so I told him I couldn't issue a check without knowing what it was for. So he said, "Well, talk it over with your president and I will be back." So I spoke to Mr. Valensi, and as the company had reinsured all of its outstanding liabilities as of January 1, 1932, with the American Equitable Assurance Company, and Mr. Valensi asked me to speak to Mr. Barry about it. Mr. Barry is of Carroon and Reynolds, Inc.

The Special Master: Who are they?

A. They are the managers for the American Equitable Assurance Company.

The Special Master: All right.

A. So I spoke to Mr. Barry and he said, "Well, I will let you know about it." The next I heard—

Q.29. (By Mr. Holman, interrupting) Now, let me interrupt you. Do you know Mr. Barry's initials? A. John R.

The Special Master: Go ahead with your story.

A. So I think on the following day Mr. Barry called me and said, "It is all right to draw that check to the order of Mr. Street," so I drew the check as requested by Mr. Erskine and gave it to Mr. Erskine, charging it to, as I recall, the Missouri impounded rate litigation case.

Q.30. (By Mr. Holman) You didn't know what it was for but merely issued the check because Mr. Barry said so? A. That is right.

Q.31. And Mr. Barry's company was—

The Special Master: The ultimate recipient of whatever funds were impounded out there, that is the point.

A. That is right.

Q.32. (By Mr. Holman) They were interested more than your company was? A. That is right.

The Special Master: He did whatever the ultimate owner wanted him to do?

A. That is correct.

Q.33. (By Mr. Holman) Now, you have told all you know about the Missouri rate litigation as concerned your company? A. That is correct.

Q.34. Or all you know about it as concerns any other company? A. That is correct.

Q.35. You have no other information regarding the settlement or what brought about the settlement? A. Only from what I have recently learned.

Q.36. Read in the newspapers? A. That is right.

Q.37. You knew nothing about that until recently? A. That is correct.

Mr. Holman: I believe that is all.

The Special Master: His explanation is entirely satisfactory.

Cross Examination by Mr. Bullitt.

XQ.38. Your impoundings were $49,000.00 and you got back around $30,000.00 and you paid out for these expenses about $2,400.00? A. That is right.

XQ.39. That is all you know about it? A. Yes, sir.

XQ.40. Did you ever know Mr. Pendergast, Mr. O'Malley or Mr. A. L. McCormack? A. No.

XQ.41. Never had any communication of any kind with them? A. No, sir.

Mr. Bullitt: That is all.

The Special Master: This man didn't have any occasion to know anything about it. He wasn't interested.

Re-Direct Examination by Mr. Holman.

RDQ.42. You mentioned you received 11 per cent. Your company received 50 per cent prior to that time? A. The 11 per cent I mentioned was the check Mr. Erskine brought along with him.

RDQ.43. Well, you had already received 50 per cent? A. From the custodian.

Mr. Holman: That is all.

(Witness excused.)

HARRY G. CASPER, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. State your name, please. A. Harry G. Casper.

Q.2. Mr. Casper, what is the name of your company? A. The name presently is the Eagle Star Insurance Company, Ltd., having been shortened about eighteen months ago from the Eagle, Star & British Dominions Insurance Company, Ltd.

Q.3. Is the last name you gave just now the name of the company in 1935 and 1936? A. In 1935 and 1936 the name of the company was the Eagle, Star & British Dominions Insurance Company, Ltd.

Q.4. What is your position with that company? A. Presently I am United States Manager.

Q.5. What was your position in 1935 and 1936? A. In 1935 until July 1st I was assistant United States Manager, thereafter United States Manager.

Q.6. Now, Mr. Casper, your company in 1935 and 1936 and prior thereto had a suit in the federal district court, United States District Court at Kansas City, Missouri, I believe, involving the Missouri rate cases? A. Yes.

Q.7. Who was handling that for you? A. The attorneys were Hicks and Folonie.

Q.8. And what particular committee was in charge of it? A. The Missouri committee of the Western Actuarial Bureau. I would say I think, because that is my definite conviction at the moment.

Q.9. And what connection did the Subscribers' Actuarial Committee have to do with it? A. Possibly I should have said Subscribers' Actuarial Committee rather than the Western Actuarial Bureau.

Q.10. Do you know who was the chairman of the Subscribers' Actuarial Committee there in 1935? A. Charles R. Street.

Q.11. Are you acquainted with Mr. Street? A. I knew Mr. Street very well.

Q.12. Mr. Casper, your company had some impoundments there, I believe? A. Yes.

Q.13. Something like $20,500.00? A. That sounds about right, yes.

Q.14. Now, you heard that the litigation had been compromised and settled, I suppose? You got information that the rate suit there in Missouri had been compromised and settled? A. At a certain time, yes.

Q.15. Well, I ask you then when you heard it? A. Well, it would be a little difficult to say.

Q.16. But with reference to when it purported to be settled. I will state that it is in evidence that the

settlement itself was dated, the compromise agreement was dated May 18, 1935. Now, how long after that would you say was it that you heard of the settlement? A. Well, I wouldn't try to answer that.

Q.17. It is in evidence that the federal court entered a decree involving the distribution of the impounded funds up to May 1, 1935. The court entered its decree February 1, 1936. Now, when, with reference to that date, did you hear of it? A. Well, then I would say very shortly after that date.

Q.18. Very shortly after that date you were advised, weren't you, as to the terms of the decree distributing the impounded funds? A. Well, I would have to say yes, because the thing certainly went through apparently in proper shape for us to handle.

Q.19. That is right. You know that shortly after that you got 50 per cent of your impoundings back? A. Absolutely.

Q.20. And do you recall in a general way what the distribution was under the terms of that decree? A. Oh, yes, 50 per cent to come to the companies, 20 per cent to go to the policyholders, 30 per cent to be held by the trustees to serve later purposes.

Q.21. Do you know who they were? A. Street and Folonie.

Q.22. As trustees? A. Trustees.

Q.23. Now, go right on. To them as trustees for what? A. To pay expenses and liquidate the position.

Q.24. Any money of that 30 per cent not required for expenses, where was that to go? A. Was to be returned to us as a further part of the 80 per cent which was to come to us all told.

The Special Master: You were to get 80 per cent gross?

A. That was our understanding, but were to pay a great many expenses and 30 per cent was reserved to handle that with.

The Special Master: To be sure that they could take care of the expenses?

A. Yes.

Q.25. (By Judge Henson) Now, Mr. Casper, you had that information shortly after the first of February, 1936, I believe? A. We will assume that. I think that is true.

Q.26. It wasn't very long after that until you received your 50 per cent, was it? A. I am willing to

say yes to that. The dates, I don't know anything definite about those dates and I didn't check them up in any way.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 157, 158 and 159, EMF.")

Q.27. Now, Mr. Casper, I show you the Defendants' Exhibit 157, which I now introduce in evidence, and will ask you if that is a photostatic copy of a check as it purports to have been made to C. R. Street, Agent, and signed by you? A. It is.

Q.28. In behalf of your company. I will ask you if this part of that photostat is the endorsements of the check? A. It is.

(Which said Defendants' Exhibit 157, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

109

The Eagle, Star & British Dominions

UNITED STATES BRANCH
H. D. HARRISON
H. G. HASPER

No. 45827

NEW YORK, MAR 24 1936 19

PAY TO C. R. STREET, AGENT OR ORDER $ 1028.57

[illegible]

IN FULL SETTLEMENT OF VOUCHER 22653

TO THE BANKERS TRUST COMPANY
1-108 NEW YORK, N. Y.

11

COUNTERSIGNED

ASST. SECRETARY

PAID THROUGH CLEARING HOUSE
11 M.
MAR 26 1936
BANKERS TRUST CO.

POLICY NO. COMPANY

R 1 C12

R 157

Q.29. Now, what can you tell us about what caused you to make that check? A. On a certain day Mr. Erskine stepped into my office, handed to me a check, placed in front of me on my desk a check, the amount of which I do not remember, but it was supposed to be for 11 per cent of our impounded funds, and on a certain morning Mr.—

Mr. Bullitt (Interrupting): A little louder, please.

A. On a certain day Mr. Erskine stepped in my office and laid on the desk in front of me a check, the amount of which I do not remember, but it purported to be 11 per cent of our Missouri impoundings. I do not remember his words, but I think I can safely say smilingly he said, "Here is something for you, 11 per cent of your impoundings. I want your check for 5 per cent," and he nominated the amount, the amount being as shown on that check.

Q.30. (By Judge Henson) Did he say whom he wanted the check made to? A. Yes, he did. I don't know whether he said it at that moment, but when it came time to issue the check, either I asked how or he stated how he wanted the check made.

Q.31. How did he want it made? A. He wanted it to C. R. Street, Agent, as it was made.

Q.32. The 11 per cent check was the check of Street and Folonie as trustees, wasn't it, that is the check you received? A. You will pardon my indefiniteness when I say I presume it was.

Q.33. Now, Mr. Casper, what did he tell you this check he asked you to issue, what did he tell you that was for? A. He told me in reply to my inquiry for what it was, that he did not know other than Mr. Street had asked their office to collect that check in that amount of 5 per cent for them. I do distinctly remember saying that "that doesn't serve my purpose. I have bookkeeping matters to take care of in this office and I have got to know what to charge it to. Is it to be charged against our recoveries or is it a matter of legal expense?" He says, "Oh, no, this is a matter of legal expense in closing this matter up." I said, "Then it should be charged to legal expense?" He said, "Yes." I said, "All right."

Q.34. Now, I show you Defendants' Exhibit 158, which I now introduce in evidence, and will ask you what that is. Was that the requisition voucher for that check? A. It acts as a requisition and a voucher later,

when and if executed and returned to us. That comes —this is the perforated copy of a bound book made in duplicate, the second sheet being a thinner one and is not perforated and remains a part of the bound volume.

(Which said Defendants' Exhibit 158, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

VOUCHER No. 22653

CHECK NO. 4587

DATE 1-4-16

EAGLE, STAR & BRITISH DOMINIONS INSURANCE CO., Ltd.

90 JOHN STREET · NEW YORK CITY

ACCOUNT Legal Expenses

DATE	POLICY No.	MEMORANDA	Com.	DEBIT	CREDIT
		In Commissioner's adjustment of Insurance Expense 12/31/15			10.97
		Total			10.97

Please Receipt and Return

Com.

Check 10.97

112

Q.35. Then you posted this voucher and that is in your handwriting, is it? A. It is not. Mr. McBride at that time, as the check shows, was chief accountant. Since that time he is United States branch secretary. I do not issue checks in any way, but they issue them upon my request or instructions, so I called Mr. McBride and told him I wanted the check for this and it was at that time the matter of how it was to be charged came up. McBride went back to his desk—no, McBride went out and brought me back the check with this voucher made out to this extent.

Q.36. Just indicating? A. You notice this is a different writing than this (indicating).

Q.37. The date, 3-24-38, and "C. R. Street, Agent," and the number 45827 was all that was on this sheet? A. When he walked back into my office with the check which at that time was made out, but at that time he says, "I have to have this information, Mr. Casper," so when he got that information he went back and filled this out and this is McBride's handwriting. That is the handwriting of the cashier whose initials are there.

Q.38. Now, the words here at the top of the account, "Legal Expenses," and down in the middle of it, "In connection with adjustment of Missouri impounded refund to 4-30-36," that was all done under your supervision, was it; that was put in there at your direction? A. Not as of a verbatim direction. It is the result of the conversation, Mr. McBride's choice of words.

The Special Master: That is the way he boiled down the information you gave him?

A. That is the way he boiled down the information.

Q.39. (By Judge Henson) Now, I show you Exhibit 159 which I now introduce in evidence.

Mr. Bullitt: Did you offer that 158 in evidence?

Judge Henson: Yes, I stated it along with the question to shorten it.

Mr. Bullitt: All right.

Judge Henson: Just to shorten this.

Q.40. I show you Exhibit 159 which I now introduce in evidence and ask you what this page is. A. It is a photographic copy of a page out of our cash book.

(Which said Defendants' Exhibit 159, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Defendants' Exhibit No. D 159 is page 252 of the cash book of EAGLE STAR AND BRITISH DOMINIONS INS. CO., LTD., month of March, 1936, which among other entries, shows check No. 45827, account "Legal Expense, payable to C. R. Street Agent. In connection with Adjustment of Missouri Imp. Refund to 4/30/36 $1,028.57."

Q.41. And calling your attention to the sixth line here where the check is posted, and it is marked, "Legal, C. R. Street, Agent, in connection with adjustment of Missouri impoundment refund to 4-30-36," and the amount, $1,028.57, in the two columns. Now, did you have anything to do with entering that? A. Absolutely not.

Q.42. Who did that? A. The cashier.

Q.43. Now, Mr. Casper, did Mr. Erskine tell you that this was for legal expense? A. He did.

Q.44. Did you ask him what particular legal expense it was? A. No.

Q.45. You knew that the legal expenses were to be drawn out of this 30 per cent, the 30 per cent being a part of the 80 per cent? A. I am not prepared to admit I knew at that day.

Q.46. You are not sure you knew at that day? A. I had known it prior to that time because we had the bulletin giving the original disposition saying that the 30 per cent—

The Special Master: What you mean is you are not prepared to admit you had it in mind at that time?

A. I am not prepared at that time to admit there was any memory of that thing in any way, shape, or form.

Q.47. (By Judge Henson) So, of course, you had no idea about a possible double payment? A. None at all.

Q.48. Did you ask Mr. Erskine for any particulars about the expense of it? A. None whatever. All I asked was, is that a relative situation. Now, I am not trying to repeat the words—"Are we all doing it? Is this a requirement of them all?" May I digress a moment and say just this, that in view of events I am a whole lot dumber than I thought I ever was.

The Special Master: You are a whole lot what?

A. Whole lot dumber than I thought I was.

Mr. Bullitt: He?

The Special Master: "I," he said, in view of events. I presume he means subsequent events?

A. Yes, sir.

Q.49. (By Judge Henson) You had implicit confidence in Mr. Street? A. I disliked the man thoroughly, but I had perfect confidence in his integrity and ability.

Q.50. That was what caused you to make the check to Mr. Street? A. Yes.

Q.51. He could have gotten any other amount than this? A. Anything he would have asked for with the statement that it was relative.

Q.52. Relative? A. And my confidence, of course, in Mr. Erskine and this office would be the same.

The Special Master: He said it was relative. He means it was a prorata basis and applicable to all of the companies involved; that is what you mean?

A. Yes, sir.

Mr. Bullitt: He thought it was "relevant," "relative."

A. Let's change it and say "proportionate."

Mr. Bullitt: Relative to the 11 per cent transaction.

A. No, that use of the word "relative."

Mr. Bullitt: Relative as to the other companies.

The Special Master: I understand him, that it applied equally to all of the companies, according to their proportionate interest.

A. We asked for no less and intended to do no more than our share always.

Judge Henson: I believe that is all.

Cross Examination by Mr. Bullitt.

XQ.53. Did you, or, so far as you know, anybody else connected with your company have any personal acquaintance with Mr. T. J. Pendergast or Mr. O'Malley or Mr. A. L. McCormack? A. Mr. Pendergast and Mr. O'Malley I can only answer definitely for myself and say none whatever. I will answer somewhat more indefinitely for anyone else connected with the company and say I don't think any person had. I think back in the past, fifteen, twenty years ago, I think I remember personally meeting Mr. McCormack at some agents' meeting or something.

XQ.54. Did you ever by telegram, telephone, letter or personal conversation have any communication with Pendergast or O'Malley or McCormack regarding this rate situation or the settlement of it? A. I did not.

The Special Master: Mr. Casper, was there any promise that there would be an accounting given to you for what this was for?

A. I don't know that there was. I can't remember that there was any accounting.

The Special Master: That there would be any statement given to you?

A. I am prepared to answer that no, there wasn't any. I didn't even ask for it.

The Special Master: There never was any intimation that you would get any detail more than you ever had?

A. No.

XQ.55. (By Mr. Bullitt) Did you or anybody connected with your company, so far as you know, ever ask Mr. Street to act for you in any way? A. No, in no way. We smaller companies do a great deal of following and very little leading, much to my discouragement sometimes, and the matter was in the hands of trusted counsel with implicit faith in the integrity of the committee, so when the suit was started, when it was ended, when it was carried on and everything, we asked no questions whatever. Does that answer your question?

XQ.56. Yes. Did you or your company ever authorize Mr. Street or anybody else to pay any money to Pendergast or anybody else so as to get a settlement of this kind? A. No.

Mr. Bullitt: That is all.

Re-Direct Examination by Judge Henson.

RDQ.57. Mr. Casper, do you think of anyone else in your office that would know anything about this transaction more than what you have detailed right here? A. There is no one else in the office that would know anywhere near as much, except in details. Mr. McBride would know more details because he handled the details. From what is called an executive viewpoint, there wouldn't be anybody else in the office.

RDQ.58. Mr. McBride only did the clerical? A. That is all.

RDQ.59. He didn't see Mr. Erskine, so far as you know? A. He saw him that day he came to my office. He was called in and stood there a moment while this matter was disposed of.

RDQ.60. Now, these exhibits that are shown you, are they all that you know of in your office that relate

to this transaction at all? A. Except the big file having to do with all of the bulletins, and does your question have in mind the matter of this getting information for this wrongful payment of money in fee?

RDQ.61. Yes. A. Certainly there is no one in our office knows anything of that.

Judge Henson: I believe that is all.

(Witness excused.)

JOHN R. BARRY, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. State your name, please. A. John R. Barry.

Q.2. What official position do you hold with Corroon & Reynolds? A. Vice-president.

Q.3. Just what is the nature of the business of Corroon & Reynolds? A. We are underwriting managers.

Q.4. Just explain that a little further, if you please, for the record. A. Well, in the case of the company that is interested in this Missouri litigation, Importers & Exporters Insurance Company, I was not an officer nor were any of Corroon & Reynolds Company officers. We operated the company after they reinsured their entire portfolio under a sort of a general agency or underwriting manager's basis.

Q.5. Something was mentioned here a minute ago about an equitable company. A. The American Equitable. We reinsured their entire liability at the end of 1931.

Q.6. With Corroon & Reynolds? A. With the American Equitable Assurance Company, Corroon and Reynolds being managers.

The Special Master: They have to reinsure with the company. This is only a company that has the management contract by which they do the underwriting for the company, but the company has to actually reinsure in order to comply with the insurance regulations? A. That is right.

Q.7. (By Mr. Holman) The American Equitable Company reinsured all of the risks of Importers & Exporters? A. Yes.

Q.8. You manage that American Equitable Company? A. Yes, sir.

The Special Master: And thereby you had the interest in the disposition of the impoundings for the companies that were reinsured?

A. We had some interest in it. The Importers & Exporters had a big interest in it because up until the time they reinsured the business, whatever was coming from Missouri belonged to the Importers & Exporters.

The Special Master: When did they reinsure?

A. I think it was the end of 1931. I am not sure.

The Special Master: Then in 1936 that would be probably all run out?

A. In fact, the company left the state, I think, in 1932; wasn't in the state, '32, '33, '34 and '35, and hasn't been in since, as a matter of fact.

The Special Master: What I mean a five year policy would run off in six years?

A. Oh, yes.

The Special Master: At the end of the five years would be practically run off?

A. Practically run off.

The Special Master: All right, go ahead.

Q.9. (By Mr. Holman) Do you recall that about March, 1936, Mr. H. L. Wilkins with the Importers & Exporters called you relative to the payment or the issuance of a check to C. R. Street, Agent, presumably for certain expenses in connection with the Missouri rate litigation? A. Yes.

Q.10. Just tell us all you know about that conversation. A. Well, in that conversation Wilkins was the treasurer of the Importers & Exporters. I was not an officer of the company. A request had evidently been made to Wilkins to draw a check for 5 per cent of the impounded premiums of the Importers & Exporters. Wilkins asked me what I thought about it, whether he should draw the check, and I said, "Well, I think you better draw the check. It is the request from Mr. Street who has been handling this matter for years, and if he wants 5 per cent, give it to him."

Q.11. Now, didn't you take a day to investigate that before you told him that? A. No, I did not.

Q.12. Then if he testified that he took the matter up with you and that you told him you would call him back later, he was in error? A. No, I wouldn't say he was in error. I probably said, "I will call you back later," because I wanted to sit down and figure out what the thing was all about.

Q.13. Then if it wasn't a day, you did take some period of time to think it over? A. Yes, but I can't remember all of that detail. I may have said to Wilkins, "I will call you back." I may have been busy at the moment.

Q.14. Did you make any investigation as to what this money was for? A. No, I did not.

Q.15. You have no idea what it was for? A. No, I had no idea what it was for. I assumed that Mr. Street handling this matter, if Mr. Street called for 5 per cent, an outstanding executive in the insurance business, who had had the full responsibility, if he called for 5 per cent, I couldn't be asking him in detail what it was for, on the theory that when the matter was all wound up we would get an accounting from Mr. Street, or Folonie and Hicks, whoever it was, as to what had happened.

Q.16. You knew at that time that Mr. Street had been representing as agent, with full responsibility regarding this Missouri rate litigation? A. I didn't know that definitely. I didn't know much about it. We were in the state court. I assumed Mr. Street—I knew Mr. Street was chairman of the committee that was handling the litigation, and I assumed he had full responsibility and authority to act for the companies.

Q.17. You didn't call anyone up and make inquiry about it? A. No, I think, as I reflect on it, I think Mr. Haid called me up and said that the request had been made of the Importers & Exporters for the check, if they asked me about it, would I tell them to get the check over. I do remember that part.

Q.18. Was that done before or after Mr. Wilkins took it up with you? A. I can't remember that. I have tried to think whether it was before or after and that would be a perfectly natural request because the Importers at the time was practically dormant; I mean doing nothing. They just had a president and secretary there and no office organization of any kind.

Q.19. Did you ask Mr. Haid what they wanted this money for? A. No, I did not.

Q.20. He just called you up and said, "If the Importers & Exporters talk to you about this, you have them get out that check"? A. Well, "Will you please ask him to send the check along?" Or words to that effect.

Q.21. You just took that request as he said it and complied with it? A. Just as I get lots of requests in the business.

Q.22. Isn't it your practice in the business to investigate what you are doing and know what you are paying out money for? A. I knew that the Importers & Exporters was paying 5 per cent in connection with matters that had been going on for years, and they were paying to Mr. C. R. Street, who was the chairman of that committee, and I don't think there was anything illogical to say, "Go ahead and give it to them."

Q.23. Didn't you know that prior to that time this case had been settled? A. No.

Q.24. You didn't know anything about that? A. No.

Q.25. You didn't know that at the time they requested this 5 per cent check they handed the Importers & Exporters a check for 11 per cent? A. I didn't know whether they handed it to them at that time.

Q.26. You knew they got it? A. I don't know that they got it. I mean I was not an officer of the Importers & Exporters.

Q.27. Well, but you were interested indirectly? A. Yes, but I don't know whether they got it or not.

The Special Master: Let's see if I get it. Your own company was in the state court?

A. All our companies.

The Special Master: Your matters in the state court cases were not settled?

A. As far as I know, they weren't settled. I don't think they are settled yet.

The Special Master: And the only connection you had with any federal court was by reinsurance only?

A. Was by reinsurance; the only reason I would be asked as to whether it was all right to give the check to Mr. Street was that the Importers had moved over into our office and Wilkins was a minor officer wanting to know whether it was all right to draw a check for 5 per cent. He probably asked me about any other number of items that Importers paid with no connection with this as to whether it was all right to pay it.

Q.28. Was Mr. Haid in the practice of supervising the collection of funds in regard to litigation of insurance companies? A. No, not so far as I know, he wasn't, because we never had any other matter besides this particular one.

Q.29. Were you in 1935 or 1936 an officer of or interested in, either directly or indirectly, any company connected with the federal court rate litigation in Missouri? A. No, not that I know of at the moment.

Q.30. Well, if you had been, you would know of it? A. I think I would, yes.

Mr. Holman: I think that is all.

Cross Examination by Mr. Bullitt.

XQ.31. Do you or any member of your firm know Mr. Pendergast or Mr. O'Malley or Mr. A. L. McCormack? A. Well, I knew Mr. McCormack slightly because he was with Charles L. Crane & Company, agents out in St. Louis. Mr. O'Malley I knew slightly, having met him at an Insurance Commissioners' Convention. Mr. Pendergast I did not have the privilege or honor, or whatever you want to call it, of knowing.

The Special Master: He was quite a colorful personality.

A. I understand so.

XQ.32. (By Mr. Bullitt) Did you or any member of your firm have any communication by telephone, telegram, letter or personal contact with Pendergast, O'Malley or McCormack regarding the Missouri litigation or any settlement of it? A. No.

XQ.33. Did you ever authorize Mr. Street to pay out any money to settle the litigation? A. No.

Mr. Bullitt: That is all.

The Special Master: That is all. We will adjourn to a quarter after one.

(Witness excused.)

Whereupon, the further taking of testimony in said case was adjourned until one-fifteen p. m. of said Wednesday, August 2, 1939.

AFTERNOON SESSION, WEDNESDAY, AUGUST 2, 1939.

Pursuant to adjournment as aforesaid, at one-fifteen o'clock p. m. of said Wednesday, August 2, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

EVERETT W. NOURSE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Everett W. Nourse.

Q.2. Mr. Nourse, you reside here in New York? A. I do.

Q.3. What is your connection with the London Assurance Corporation group? A. United States Manager.

Q.4. And that group consists of the London Assurance Corporation, Manhattan Fire & Marine and Union Fire Insurance Company? A. Of Paris, that is right.

Q.5. And what was your connection with this group in 1935 and 1936? A. The same capacity as at present.

Q.6. You are the United States Manager for the English Company and for the French Company. What is your connection with the other? A. President of the Manhattan.

The Special Master: The president of the Manhattan, which is a corporation organized in this country?

A. Yes.

The Special Master: Incorporated in this country?

A. Yes, incorporated in the United States.

The Special Master: All right.

Q.7. (By Senator Hollingsworth) You were familiar, of course, with the Missouri fire rate litigation? A. Yes, I have been.

Q.8. You knew of the compromise agreement that was effected in May of 1935? A. Yes. You mean the 80 and 20 agreement?

Q.9. The 80 and 20. Now, who was in charge of this litigation for your company and the other companies, as far as you know, as to the other companies? A. Well, I should say the Subscribers' Actuarial Committee of Chicago of which Charles R. Street was chairman.

Q.10. You knew that Mr. Street assumed to act largely in the direction of this litigation? A. We had turned over our affairs in this litigation to Mr. Street and the committee.

Q.11. And the committee? A. Or to the committee. Mr. Street was the committee.

Q.12. To handle through to a conclusion in some manner? A. Right.

The Special Master: What do you mean when you say Mr. Street was the committee?

A. Well, I couldn't give you the name of any man that was on the committee.

The Special Master: Except Mr. Street?

A. Except Mr. Street. Mr. Street's character and personality made him an outstanding man and he had a dominating personality and whenever anything was discussed in relation to Missouri, it was always Mr. Street that discussed it.

The Special Master: In other words, you knew that if he was the chairman of the committee and it was turned over to that committee that he would take charge of it?

A. Absolutely.

Q.13. (By Senator Hollingsworth) Now, did you know anything about a fund of $100,000.00 being raised at or about the time this compromise was made in May? A. No, I did not.

Q.14. When did you first learn of that? A. Mr. Erskine of the Insurance Executives' Association came in our office and asked for a check for legal expenses. I can't recall whether he came to our auditor or he came to me, but I do recall that I O.K.'ed the payment.

Q.15. That, however, was in 1936, wasn't it? A. I should say that was the spring of 1936. So far as what transpired in 1935, I have no knowledge. I don't know anything about that.

Q.16. Do you recall that out of this settlement the policyholders were to get 20 per cent, the companies were to get 50 per cent outright and 30 per cent was placed in trust for certain purposes? A. Yes, I recall that.

Q.17. What was the purpose of the 30 per cent? A. Why, to cover legal fees and expenses of various kinds, I presume. I didn't know. I didn't go into it very carefully.

Q.18. But that was your understanding? A. Yes.

Q.19. And you knew that the extent of the impounded premiums for all of the companies was something like $9,000,000.00? A. Approximately between $9,000,000.00 and $10,000,000.00 in both courts, I guess.

Q.20. Do you recall that the federal court entered a decree in February of 1936? A. Yes, February 1st.

Q.21. You understood that that decree was for the purpose of disposing of this case? A. Yes.

Q.22. Then do you recall that you received a check for your company or checks for each of your companies for 11 per cent of the impounded premiums? A. Yes.

Q.23. That was after you had received the custodian's check for 50 per cent? A. Yes.

Q.24. Of bonds or cash; I have forgotten how you received it. A. Bonds, I think it was, government bonds.

Q.25. From whom did you receive this 11 per cent check? A. I am not sure, but I imagine it came to us through the Insurance Executives' Association.

Q.26. Are you a member of that association? A. Yes, I am.

Q.27. Well, do you recall whether there was a letter of remittance or whether it came to you personally by messenger? A. I couldn't say as to that. I don't recall.

Q.28. Have you gone through your files? A. No, I haven't. I have talked it over in a general way with our auditor.

Q.29. Have you run across any letter of remittance? A. I haven't, no.

Q.30. When was it with reference to the time that you received your 11 per cent check that you gave a check for 5 per cent of the impounded premiums? A. Why, I believe that the auditor told me that he gave that check for 5 per cent at the time he received the 11 per cent check.

Q.31. Who is your auditor? A. Frederick W. Mason.

Q.32. Is he here in New York? A. He is in town, yes.

Q.33. Did you have any contact at all with the person who delivered the check or who called for the 5 per cent check? A. Yes, I think he came into my office with Mr. Mason. I am quite sure of it.

Q.34. Now, who was that? A. Mr. Erskine.

Q.35. And Mr. Erskine's connection with the Executive Association was what? A. He was the assistant manager.

Q.36. Acting under Paul L. Haid? A. Right.

Q.37. And you and the auditor and Mr. Erskine were present? A. That is right.

Q.38. And that is Mr. Mason who is here in the city now? A. Yes.

Q.39. What did Mr. Erskine tell you when he came in? A. Well, he said, as I recall, that he had a check for a refund of the 30 per cent and he wanted a check for 5 per cent.

Q.40. And a refund out of the 30 per cent was the 11 per cent, as I understand it? A. The 11 per cent of 30 per cent, I assume the check was, as near as I can recall.

Q.41. You mean 11 per cent of the entire impounded fund? A. Yes.

Q.42. But it came out of the 30 per cent allocated for expenses, is that the way you understood it? A. Yes.

Q.43. Do you remember—

The Special Master: 11-30ths of the 30 per cent, but 11 per cent of the whole?

A. 11 per cent of the whole.

The Special Master: Which would only be 11-30ths of the 30 per cent?

A. It would be 11 per cent of the whole impounded?

The Special Master: Yes.

A. Which reduced the attorneys' fees to 19 per cent, attorneys' fees and expenses to 19 per cent.

Q.44. (By Senator Hollingsworth) That is right, and did he tell you that they had disbursed the 19 per cent for attorneys' fees? A. No, he made no statement as to the disposition of what was left.

Q.45. What else did Mr. Erskine say to you? A. Nothing that I recall.

Q.46. Well, he asked you at that time, at the time he delivered you the check for 11 per cent, to give him a check for 5 per cent? A. Yes, as I recall it.

Q.47. What did he tell you the 5 per cent was for? A. Legal expenses.

Q.48. Well, you understood that some 19 per cent remained or had been disbursed out of the fund for attorneys' fees? A. Yes.

Q.49. And you understood that the holding of the balance was in the hands of Folonie and Street as trustees? A. Yes, sir.

Q.50. Didn't you ask him why he wanted the 5 per cent for attorneys' fees when the 30 per cent had been allocated for that purpose? A. I made no inquiry. I told the auditor, "O. K., Mr. Erskine wants a check."

Q.51. Why didn't you inquire? A. Because I didn't know anything about the situation, and having the inquiry come from the source which it did, and knowing the affairs were handled in Chicago, I made no inquiry with respect to the detail of it. I always felt that 30 per cent was an outrageous amount, and any rebate on that seemed agreeable, even though we paid back some part of it.

Q.52. Was any inquiry in your mind as to why you would receive a check for 11 per cent from the trustees and then be called upon for a check for 5 per cent? A. The trustees?

Q.53. You were called upon for a check of 5 per cent? A. That is right. I didn't know there were any trustees, though.

Q.54. You knew that Folonie and Street were handling this 30 per cent fund? A. Not as trustees. They were handling it, but I didn't know in what capacity.

Q.55. You didn't understand they were trustees? A. I did not, never did.

Q.56. But you knew that Folonie and Street were handling it? A. Yes.

Q.57. And you knew your check came from it? A. Yes.

Q.58. Yet you were asked to kick back 5 per cent? A. Yes.

Q.59. To whom? A. Charles R. Street.

Q.60. Was there any explanation as to why you should send back to Charles R. Street 5 per cent when you had just gotten a check for 11 per cent from the fund that was specifically designated for that purpose? A. No. I didn't make any inquiry.

Q.61. And none came to your mind? A. None came to my mind.

Q.62. Did Mr. Erskine tell you to designate Charles R. Street as agent? A. I imagine so, because I saw the voucher check and it was drawn to him as agent.

Q.63. Did you authorize the voucher check? A. Yes.

Q.64. Did you do that by requisition or verbal instruction? A. Verbal instruction.

Q.65. Isn't it customary for you to give a requisition for checks? A. Not in my office.

Q.66. You don't use requisitions for checks? A. Not in my office.

Q.67. So you gave verbal instructions to the auditor to issue the check to Charles R. Street, Agent? A. Yes, sir.

Q.68. Agent for whom? A. Agent for us, for the companies.

Q.69. For what purpose? A. For legal expenses.

Q.70. To disburse this money? A. Or expenses or whatever—

Q.71. (Interrupting) To disburse the money for legal expenses? A. That is right.

Q.72. As Mr. Erskine had stated to you? A. Yes.

(Photostatic copy of check, handed to the reporter, was marked for identification as "Defendants' Exhibit 160, EFM.")

Q.73. Did Mr. Erskine tell you why he happened to deliver the check in person? A. No, I don't recall any conversation.

Q.74. He waited, however? A. The auditor and Mr. Erskine came in the office and Mr. Mason said he had a check and Mr. Erskine wanted a check, and I said, "All right, give Mr. Erskine a check."

Q.75. And Mr. Erskine waited for the check? A. He must have, yes.

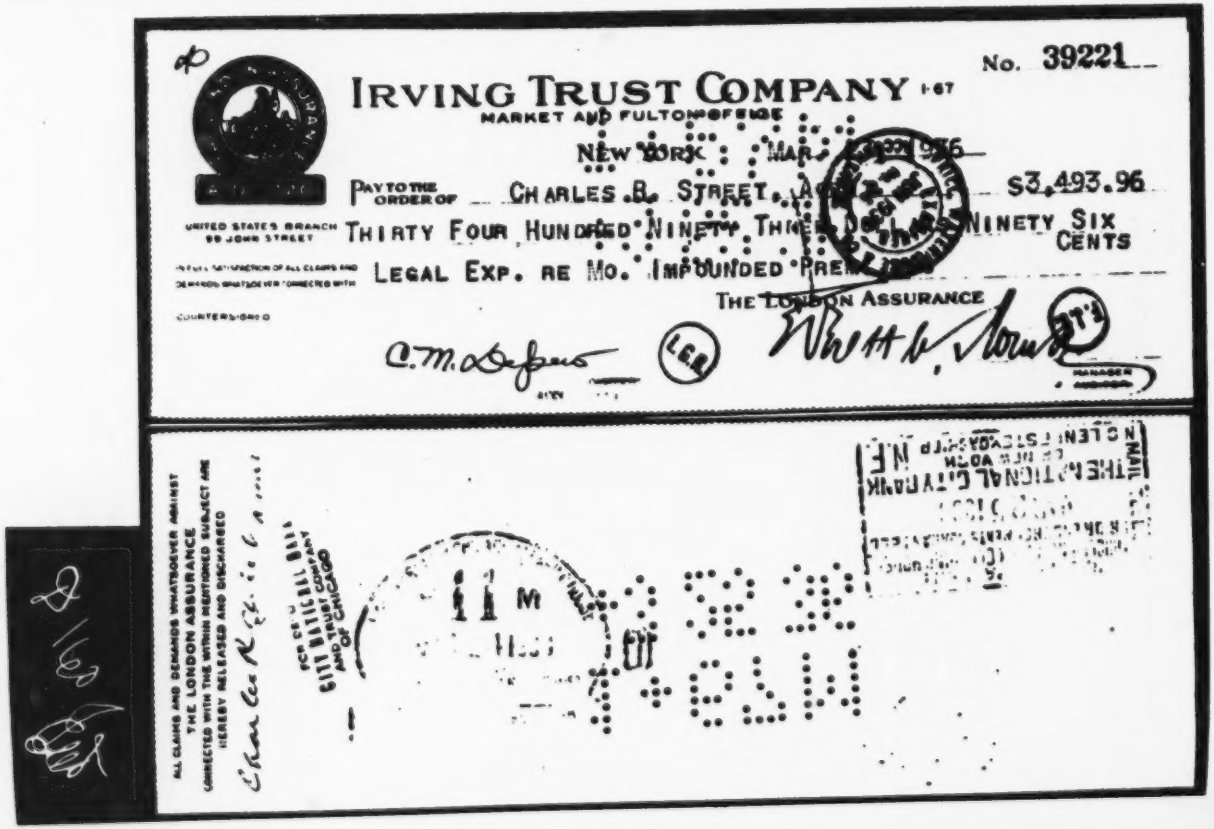
Q.76. Did he tell you that he wanted the check then and he would wait for it? A. No, I don't recall any conversation to that aspect of it.

Q.77. I hand you Defendants' Exhibit 160 and offer the same in evidence, and ask you to state if that is a photostatic copy of the check and the endorsements? A. That is right.

Q.78. Now, did you at that time know to whom these legal expenses were to be paid? A. No.

Q.79. To whom Street was distributing the money? A. No, I didn't know any of the attorneys except our own.

(Which said Defendants' Exhibit 160, so offered in evidence, having been previously duly marked, is in words and figures as follows:)



No. 39221

IRVING TRUST COMPANY 1-67
MARKET AND FULTON STREETS
NEW YORK MAR 22 1956

PAY TO THE ORDER OF CHARLES B. STREET, A[illegible] $3,493.96

UNITED STATES BRANCH
99 JOHN STREET

THIRTY FOUR HUNDRED NINETY THREE DOLLARS NINETY SIX CENTS

IN FULL SATISFACTION OF ALL CLAIMS AND DEMANDS WHATSOEVER CONNECTED WITH LEGAL EXP. RE MO. IMPOUNDED PREM[illegible]

THE LONDON ASSURANCE

COUNTERSIGNED

C. M. DeFeo

AUTH

LCA

Wm H. Moore

MANAGER

ALL CLAIMS AND DEMANDS WHATSOEVER AGAINST THE LONDON ASSURANCE CONNECTED WITH THE WITHIN INSTRUMENT SUBJECT ARE HEREBY RELEASED AND DISCHARGED

FOR $3,493.96
CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

THE NATIONAL CITY BANK
OF NEW YORK
NATIONAL STOCK EXCHANGE N.Y.

MAR 23 1956

Q.80. Did you afterwards get any information in regard where this money had gone? A. None whatever.

Q.81. Did you attempt to get any? A. No, I never did.

Q.82. Was this reported to your home offices? A. In accounts.

Q.83. And only by accounts? A. That is all. Once a month we reported to London.

Q.84. No correspondence in regard to this particular item between you? A. None whatever.

Q.85. Do you have any further information about the matter whatsoever? A. None, until it broke in the newspapers.

Q.86. Have you since gone through your files? A. I have talked with our auditor about it and asked him. He brought me another copy similar to that of that check, and, of course, it came up at the time the Attorney General wanted the checks and wanted the data. We went into our files and got it out and took out our ledger records—

Q.87. (Interrupting) Do you mean the District Attorney? A. The District Attorney in Kansas City.

Q.88. Mr. Milligan in Kansas City? A. That is right.

Q.89. Did you go to Kansas City in connection with that inquiry? A. I did not.

Senator Hollingsworth: I think that is all.

Cross Examination by Mr. Bullitt.

XQ.90. Did you or anybody else connected with any of your companies, so far as you know, have a personal acquaintance with T. J. Pendergast or A. L. McCormack or Emmet O'Malley? A. None whatever.

XQ.91. Did you or anybody in your companies by telephone or telegraph or letter or personal conversation have any discussion with them concerning the settlement of this Missouri rate litigation? A. None whatever.

XQ.92. Did you ever have any conversation with Mr. Street or any correspondence with Mr. Street by which you told him to look after your suit out there in Missouri? A. No. I should say that was more or less automatic.

XQ.93. That is what? A. I should say it was more or less automatic that he handled our interests.

XQ.94. And you just said nothing about it? A. We subsided.

XQ.95. Did you ever authorize Street or any of the Actuarial Committee or anybody else to pay any money to anybody outside of your regular counsel in connection with this Missouri litigation or its settlement? A. Never gave any authorization of any kind.

Mr. Bullitt: That is all.

The Special Master: When you gave that check, you expected him to use it for your company, didn't you?

A. For our companies for whatever purpose the committee decided, or by whomever the committee had been served by way of attorneys.

The Special Master: What you meant was you never gave any specific directions as to what to do with the money?

A. No specific directions.

The Special Master: You left it up to them?

A. Left it to the committee. We received reports from the committee usually at the Western Underwriters' Association meetings twice a year; after the meetings were over, Mr. Street usually gave us a report of progress on the affair, and that was the extent of my knowledge of what was going on in Missouri.

The Special Master: Well, there is some evidence here that Mr. Street said that he would explain this matter connected with this 5 per cent at White Sulphur. That was, I understand, where the next semiannual meeting would be. Did you attend that meeting?

A. I do not recall that I ever heard any explanation nor do I ever recall hearing Mr. Street make that statement.

The Special Master: No, I didn't say. He did make that statement to certain people that wanted to know what it was about, not you. Did you attend that White Sulphur meeting?

A. The last White Sulphur meeting I attended, I think, was in the spring of 1935. Then I heard Mr. Street report at Hershey, Pennsylvania, in October of 1935, just a general statement of progress, and he was always followed by Mr. Folonie, who gave us the legal aspects of the case as it was progressing.

The Special Master: But you didn't attend the White Sulphur meeting after you made this payment of this 5 per cent?

A. No, I didn't attend that. I don't recall having heard any discussion or any statement as to that.

The Special Master: Well, did you attend?

A. Well, that I don't remember.

The Special Master: All right.

A. I could probably—I think I was on the other side at the time of that meeting in April. I went over to our home office at the annual meeting in London. I think that would have been around April 18th or 20th of 1936.

Re-Direct Examination by Senator Hollingsworth.

RDQ.96. Do you recall that in the fall of 1935 Mr. Street made any report with regard to the compromise settlement made in May of 1935? A. I do not. I don't recall hearing anything about that until we had a letter from the Subscribers' Committee. I think that came in a notification of what had been done.

RDQ.97. Which was in the nature of a form letter? A. A printed form letter.

RDQ.98. Did you mention some meeting in Pennsylvania where both Mr. Street and Mr. Folonie made some kind of a report? A. Well, that was the fall, if I recall correctly, that was a fall meeting of the Western Underwriters' Association at Hershey, and I mentioned it merely in view of the fact that it was their custom at each of these meetings to report on the progress of the case.

RDQ.99. But you have no distinct recollection of it? A. In a general way, but I have no recollection of what was said or what transpired.

RDQ.100. Mr. Nourse, I have a note in my file. I don't know whether I am in error or not. Do you have any connection with the London & Lancashire Insurance Company group? A. None whatever. They are a competitor.

RDQ.101. And never did have? A. Never did have.

Senator Hollingsworth: I think that is all.

(Witness excused.)

PAUL B. SOMMERS, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Paul B. Sommers.

Q.2. Where do you live, Mr. Sommers? A. I live at Maplewood, New Jersey.

Q.3. What is your connection with the American Insurance Company group? A. I carry the title of president, sir.

Q.4. That group consists of American Insurance Company and Columbia Fire Insurance Company? A. Yes, sir.

Q.5. Which is the parent company? A. The American.

Q.6. Are they both under the same management? A. Yes, the American owns 100 per cent of the Columbia.

Q.7. You are president of both companies? A. Yes, sir.

Q.8. Were you president in 1935 and 1936? A. I was.

Q.9. Were you the man of your companies who had the knowledge insofar as your company was concerned, as to the litigation pending in Missouri on fire rates? A. I knew that there was. I would like to qualify that by saying we have a Western Department at Rockford, and I knew nothing of the details.

The Special Master: The Western Department at where?

A. Rockford, Illinois.

The Special Master: That is right; you don't have your Western Department at Chicago?

A. No.

Q.10. (By Senator Hollingsworth) Who was in charge of that department? A. In 1935 I am almost certain Mr. Robe Bird.

Q.11. Where is he now? A. He is in Rockford, Illinois.

Q.12. Who was Mr. Williams? A. Mr. Williams was the security man in the same city.

Q.13. Did you know that this litigation in behalf of all of the companies was being conducted through Mr. Street and other members of his committee? A. Yes, sir.

Q.14. That is the Subscribers' Actuarial Committee? A. Yes, sir.

Q.15. Did you know that Mr. Street was the man who was actively in charge of it? A. Yes, sir.

Q.16. And he was acting as your agent in that capacity along with other companies? A. He and the Subscribers' Committee, yes.

Q.17. And had charge of it? A. Yes.

Q.18. To handle it as they saw best? A. Yes, sir.

Q.19. You were familiar with the compromise that was effected in 1935? A. Am I familiar now or was I then?

Q.20. Then. A. I can't be certain, but I think I was.

Q.21. You think you were advised of that? A. I think so, yes, sir.

Q.22. Do you recall whether you had any information before the compromise was actually made, that is, while it was being negotiated? A. No, sir. I could be almost certain that the information came to me after, much after, because it would come through Rockford, Illinois.

Q.23. When you received that information, were you told in a general way what the compromise was? A. Must have been.

Q.24. Do you recall that it was 20 per cent to the policyholders? A. Yes, sir.

Q.25. 20 per cent of the impounded premiums? A. Yes, sir.

Q.26. You knew there were some $9,000,000.00 of impounded premiums for all of the companies in the federal litigation? A. I wasn't certain the amount, but I knew it was several millions of dollars, yes, sir.

Q.27. You knew that 20 per cent was allocated to the policyholders? A. Yes, sir.

Q.28. And 50 per cent went outright to the companies? A. To the companies.

Q.29. And 30 per cent was held by some trustees, do you recall that, Folonie and Street, for the purpose of payment of expenses of litigation? A. I don't recall who it was held by, but I think I recall there was a 30 per cent distribution that was to be held by the trustees.

Q.30. Trustees? A. I think so.

Q.31. Then did you afterwards receive a distribution of 11 per cent out of the 30 per cent fund? A. We did, sir.

Q.32. To whom was that check delivered? A. That check was delivered to us in Newark.

Q.33. In Newark? A. Yes, sir.

Q.34. To what person in Newark? A. It was supposed to have come to me, sir, but I can not tell that it actually did or not. I have a memorandum in my pocket, if I might refer to it and make certain.

Q.35. I will be glad for you to. A. I don't know if it is on there or not. No, this doesn't tell me that it actually came to me, but I knew it was coming.

Q.36. When was this memorandum made? A. It was made on the 22nd day of March, 1939.

Q.37. Is it a letter that you wrote to Mr. Haid? A. Mr. Haid reciting facts.

Q.38. As to what you had in your files? A. Yes, sir.

Q.39. You knew that the check was to be transmitted to you? A. Yes, sir.

Q.40. From whom did you get that information? A. From Mr. Haid.

Q.41. How did you get it? A. By telephone.

Q.42. You were in Newark? A. Yes, sir.

Q.43. Mr. Haid telephoned you that you would receive a check? A. Yes.

Q.44. What else did he say to you in that telephone conversation? A. He said we would receive a remittance representing 11 per cent in the Missouri case and on receipt of that he would ask that we would return a check representing 5 per cent of that amount.

Q.45. Do you know how he happened to call you instead of writing you? A. No, I do not.

Q.46. In ordinary course, a matter of that kind would have been a written communication, wouldn't it? A. Yes, usually is.

Q.47. Did he tell you he was in a hurry for your check? A. I can't recall, but the indications were that he wanted a check to get to Mr. Street and we made our check to Mr. Street.

Q.48. Do you know the date you wrote your check? A. Yes, sir, on the 23rd day of March, 1936. The memorandum that Mr. Haid had said March 23rd, but I find that the date should be March 21st.

(Photostatic copies of check requisition and check, handed to the reporter, were marked for identification as "Defendants' Exhibits 161 and 162, EFM.")

Q.49. When you received that telephonic communication from Mr. Haid, did you then and there write the check or did you wait until you received the 11 per cent check? A. That I can not be positive of.

Q.50. Could you look at your book entries and see whether you received the 11 per cent check, when you received it? We will leave that question for a moment and maybe it will wash itself out. A. All right.

Q.51. Now, I call your attention to Defendants' Exhibit 161, which I offer in evidence. A. Yes, sir.

Q.52. Is that the requisition that went for the check? A. Yes, sir.

(Which said Defendants' Exhibit 161, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

AMERICAN [Y
JERSEY UND. [ ] AUTOMOBILE [ ]
UNIVERSAL [ ]
IMPORTERS & EXPORTERS [ ]

MAKE CHECK TO C. R. Hunt $7.19 05

SEND TO Story Cookie Co. 190 1/2

CHARGE TO Machine Shop Account

MEMO. In connection with One Boy Pen.

PAID
MAR 21 1936
BY CHECK

BE 1034 5m 40 3/21/36.

$16.19

Q.53. Who caused that requisition to be written? A. I did, sir.

Q.54. Is that your writing? A. No, that is Mr. Vandenboom.

Q.55. But you ordered it made? A. Yes, sir.

Q.56. Then 162, Defendants' Exhibit 162, which I offer in evidence, is that the check? A. Yes, sir.

Mr. Bullitt: Check for what?

A. Check for $9,719.03.

Mr. Bullitt: That is 162.

(Which said Defendants' Exhibit 162, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

THE AMERICAN INSURANCE COMPANY.

No. 190886 Newark, N.J. MARCH 21, 19 36.

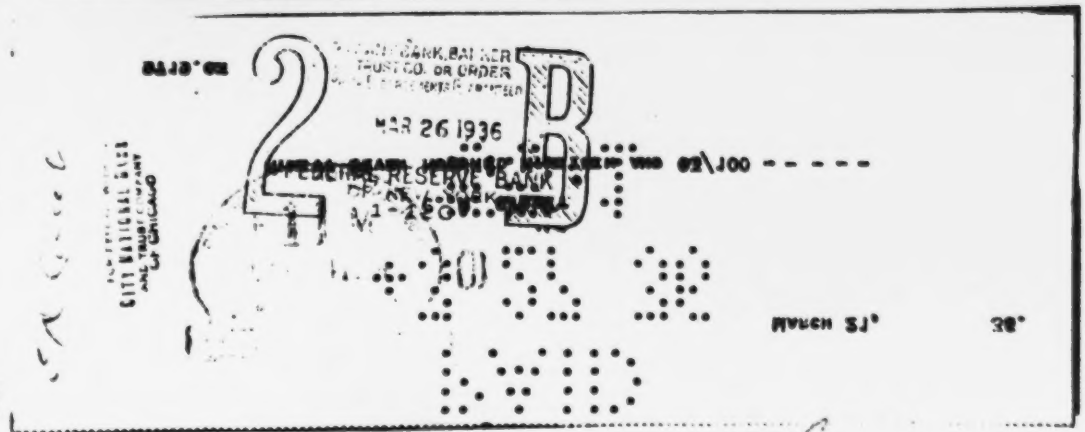
National Newark and Essex Banking Company

PAY TO THE ORDER OF C. A. MAIN

NINETY SEVEN HUNDRED NINETEEN AND 63/100 - - - - - DOLLARS

C. A. M

W. M. Lyons President Laurence E. Falls Vice-President



Q.57. (By Senator Hollingsworth) Now, can you tell me whether at the time you issued that check you had received the 11 per cent check? A. We either had or Mr. Haid assured us that the check was on its way to us, one or the other.

Q.58. What, if anything, did he say to you about the urgency of a prompt remittance? A. I only recall, sir, that he said that on receipt or simultaneously with this check we were to issue our check for 5 per cent. I don't know that he did say it was urgent, but that is all I can remember.

The Special Master: Whatever he said, it resulted in your issuing the check forthwith?

A. Yes, sir, forthwith. I can not recall.

Q.59. (By Senator Hollingsworth) Now, I notice on the requisition it says, "In connection with Missouri impounded premiums"? A. Yes, sir.

Q.60. Did Mr. Haid give you any information other than that it was funds to be used in connection with Missouri impounded premiums? A. No, sir.

Q.61. Then he didn't tell you the purpose of the check other than that? A. No, sir.

Q.62. You didn't know what its purpose was at all? A. No, sir. We were given to understand it was for legal expenses. Now, I can't say that that was that day. I think maybe it was a day or two later that we were informed that it was for legal expenses.

Q.63. You think it was a day or two later that you were informed it was for legal expenses? A. I can't be sure.

Mr. Bullitt: The witness didn't say it was so. He said it might have been a day or two later.

Q.64. (By Senator Hollingsworth) What causes you to have that impression? A. The reason I have that impression is that because the information came from Haid. That is the only reason I have it, and I maybe shouldn't have such a reason, but—

Q.65. (Interrupting) Well, if you had received the information from Mr. Haid at the time the check was drawn that it was for legal expense, wouldn't you have put that on your memorandum? A. Yes, sir.

Q.66. So you put it on the memorandum, the information that you did get from Mr. Haid? A. Yes.

Q.67. And that reads, "In connection with Missouri impounded premiums"? A. Yes, sir.

THE AMERICAN INSURANCE COMPANY

Q.68. You think that that was all of the information that you had at that time? A. That is all of the information I had at that time.

Q.69. Now, then, you have an impression now that it was for legal expenses that you later got that idea? A. Yes, sir, because my memo and my books show that it is entered for legal expenses, which was done.

Q.70. The memo is a memo that you made in 1939? A. Yes, but from our records which you have a photostatic copy of—

Q.71. (Interrupting) Now, you have here an entry on your books typewritten. I don't know what that sheet is, headed, "The American Group." What particular book of entry is that? A. That is our Western Department Account with the home office.

Q.72. Would this entry on your Western Department account with your home office have been made contemporaneously or the same day as the issuance of the check or later? A. No, sir, it would have to be made a day or so later because we would have to notify the Western Department.

Mr. Berger: That is the monthly statement?

A. That would be the end of the month. They wouldn't know until we notified them.

Q.73. (By Senator Hollingsworth) Then do you think at sometime between the hour and day that you issued the check and the hour and day on which the entry was made in this book that you received additional information that it was legal expense? A. Yes, sir.

Q.74. Do you recall the circumstances under which you got that additional information? A. I can not, sir.

Q.75. You can't recall that at all? A. No.

Q.76. You can't recall whether you made inquiry or whether Mr. Haid furnished it to you gratuitously? A. I can't tell which.

Q.77. If it came to you from Mr. Haid either at your seeking or gratuitously from him, it came by telephone? A. Yes, sir, because I am just assuming something when I say this, that I wanted to know what it was for and called to ask before I gave notice to our Western Department. That is my assumption.

The Special Master: You don't remember such a thing and that just occurs to you as a logical explanation?

A. That is all. I only remember the one conversation with Mr. Haid definitely where he said that either simultaneously—

The Special Master: The mere fact that those entries ended up the way they did, suggests that you may have done that also, but you have no recollection of it?

A. That is right, I have no recollection of it.

Q.78. (By Senator Hollingsworth) Why did you pay out to Mr. Haid? A. I didn't pay but 5 per cent.

Mr. Bullitt: Mr. Street, you mean?

Q.79. (By Senator Hollingsworth) I mean Mr. Street at Mr. Haid's request, 5 per cent, when you didn't know the exact purpose for which it was to be used? A. Why, I can explain it that when Mr. Street and Mr. Haid asked for 5 per cent, I think they could get 5 per cent from us tomorrow on any amount that they remitted to us, if—

Q.80. (Interrupting) Regardless of the purpose? A. Oh, no, no, sir.

Q.81. Well, not knowing for what it was to be expended? A. Oh, I can't answer that now.

Senator Hollingsworth: I think that is all.

Cross Examination by Mr. Bullitt.

XQ.82. I notice that the check, Defendants' Exhibit 162, was made to the order of C. R. Street for $9,719.03. Was anything said to you about making it out to his name individually or his name as agent or do you remember anything about that? A. I can not remember. Now, wait, I can remember we were instructed to make it to Mr. Street, but I can't remember whether it was agent or—

XQ.83. (Interrupting) Did you or did anybody—oh, by the way, did that check for $9,719.02 represent 5 per cent of the impounded funds of the American Insurance Company only? A. No, sir.

XQ.84. It included also the Columbia? A. Yes, sir.

The Special Master: It was a check for the group? They make the distribution afterwards?

A. Then the company pays the American.

The Special Master: It is just charged back and forth, is what they do, and if there is a balance they make it good by check?

A. In this case the Columbia made the check.

XQ.85. (By Mr. Bullitt) And then the Columbia Fire Insurance reimbursed the American Insurance Company for their share? A. For their share.

XQ.86. Of $824.12, didn't they? A. $824.12.

XQ.87. And at the time that that reimbursement was made, I show you a voucher for that. Do you know in whose handwriting that voucher is and who authorized it? A. I would say that that is Mr. Vandenboom's.

XQ.88. Who is he? A. He was then chief accountant.

XQ.89. And I notice— A. (Interrupting) This is our treasurer's.

XQ.90. And it says "5% legal fee, Missouri impounded premium." Do you know where you got that information? A. I can not say. What date is that?

XQ.91. It is paid March 23, 1936. A. It was on there at that time, so the information must have been given.

XQ.92. I will show you 162—

Senator Hollingsworth: You may let the record show, if there is no objection, that we have asked the marking of Defendants' Exhibit 163, and offer it in evidence.

Mr. Bullitt: It is a part of that they are putting in there.

(Said voucher, handed to the reporter, was marked for identification as "Defendants' Exhibit 163," which being offered in evidence, is in words and figures as follows:)

MAKE CHECK TO AMERICAN INSURANCE CO. | 824 | 12

SEND TO Mr Mihlon

CHARGE TO WESTERN DEPT | 8 nt | 12

516 Legal Fee - Missouri Suspended Prem

Agency Ground Cook Book

XD 10-29 2m 9

D/63

XQ.93. Do you know Mr. T. J. Pendergast or—

The Special Master: Let me make this suggestion, Mr. Bullitt: In view of the fact that these people live so far away from Missouri, unless there is evidence to the contrary I will always assume and find that the witnesses were not acquainted with T. J. Pendergast, R. Emmet O'Malley or with Mr. McCormack. There is no reason to assume that any of them are personally acquainted with them unless there is some evidence introduced to that effect.

Mr. Bullitt: That will save time.

The Special Master: All presumptions would be that they didn't. They are here in New York and Chicago, etc.

Mr. Berger: That will apply to the witnesses that have already been examined?

The Special Master: That applies to everybody. It is a natural presumption I will indulge.

A. Do you want me to answer? I never met the man.

Mr. Bullitt: That is all right. In view of that, Mr. Master, is it necessary for me to go ahead and ask each one of these gentlemen whether or not they authorized or instructed or knew that Mr. Street was paying any money for bribery of somebody to get this compromise judgment through, like I have been?

The Special Master: That is different.

Mr. Bullitt: All right, then I will ask it.

XQ.94. Did you or did anybody connected with your company, so far as you know, ever authorize or request or know that Mr. Street or any member of the Subscribers' Actuarial Committee was paying any money to Mr. Pendergast or to Mr. O'Malley or to Mr. McCormack or anybody else to secure this compromise settlement of the litigation or the decree in the rate case? A. No.

XQ.95. Did your company ever employ Mr. Street to do anything for you in connection with this litigation? A. Only in his position.

XQ.96. Isn't it a fact that your lawyers had charge of the litigation? A. Yes, sir.

XQ.97. And that anything that Mr. Street or the Subscribers' Actuarial Committee did was simply voluntary on their part to keep the companies informed of what was going on? A. Yes, sir.

Mr. Bullitt: That is all.

The Special Master: You don't mean to say that when you wrote a check payable to Mr. Street without knowing just exactly what he was going to do with it, you didn't thereby intend to authorize him to use it according to the way he thought it ought to be used, do you?

A. No, I understood that he was going to use it for legal expenses.

The Special Master: Yes, but you left it to him to determine what the legal expenses were and whether it needed to be paid?

A. Yes, sir.

Mr. Bullitt: But not to be used for unlawful purposes such as bribery?

A. No, sir, I wouldn't let anyone charge me with that successfully.

Senator Hollingsworth: You don't mean to say you restricted him at the time by stating—

A. (Interrupting) I had no words with Mr. Street.

The Special Master: Well, if he had had words with Mr. Street when he turned it over and said, "Be sure don't use this for a bribe," I would be quite sure that he thought he was going to use it for that purpose.

Senator Hollingsworth: I would too.

A. I didn't know it.

(Witness excused.)

THEODORE PLESSNER, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. State your name, please. A. Theodore Plessner.

Q.2. What position do you hold with the Northern Insurance Company at this time? A. President.

Q.3. What position did you hold with them in 1935 and 1936? A. Vice-president and treasurer.

Q.4. The same was true in 1936? A. Yes.

Q.5. When did you become president of the company? A. December 19, 1938.

Q.6. Now, during this period, 1935, and before, did you have knowledge of the Missouri rate litigation? A. Yes, sir.

Q.7. You knew that your company and some 136 other companies had suits pending in the federal court at Kansas City? A. Yes, sir.

Q.8. Regarding the rates? A. Yes, sir.

Q.9. Who was handling that litigation for your company? A. Through the medium of the Subscribers' Actuarial Bureau.

Q.10. You left that to the Subscribers' Actuarial Bureau to look after? A. Yes.

Q.11. And you know that Mr. Street at that time was chairman of that committee? A. Yes.

Q.12. And that he, in fact, was handling the litigation, Mr. Charles R. Street? A. I did not. I thought it was Mr. Folonie.

Q.13. Well, you knew that Mr. Folonie was attorney, did you not? A. Yes.

Q.14. For the companies? A. Yes.

Q.15. That Mr. Street was not an attorney or— A. (Interrupting) I know Mr. Street was not an attorney, but I never had anything to do with Mr. Street.

Q.16. But you knew he was very active in handling this litigation? A. Yes, sir.

Q.17. On behalf of your company, as well as all of the other companies? A. Yes, sir.

The Special Master: Let me ask you this: You knew Mr. Folonie was the attorney that was trying the lawsuits?

A. Yes, sir.

The Special Master: But you also knew that Mr. Folonie, being a mere attorney, would have to get his instructions and authority from somebody?

A. Well, yes, I believe he would.

The Special Master: You knew he wasn't coming to your company for instructions?

A. He was not, no.

The Special Master: Whom did you think he was going to for instructions?

A. I suppose he acted under the advice or counsel of the Subscribers' Actuarial Bureau.

Q.18. You learned, did you not, of the settlement agreement in regard to these cases which was executed in May, 1935? A. Yes, from advices received from the Subscribers' Actuarial Bureau.

Q.19. You were familiar with the general terms of that settlement, were you not? A. Well, yes, as to the percentages.

Q.20. Yes. A. Yes, I was.

Q.21. Just state those. A. I was, yes.

Q.22. Just state those, if you will. A. 50 per cent to the companies, 30 per cent to the trustees for expenses and 20 per cent to the policyholders, returned to policyholders.

Q.23. You understood that if it was not necessary to use this entire 30 per cent for expenses, it would be returned to the companies? A. Well, I should assume so. I did not have direct knowledge of that.

Q.24. It wasn't going to the policyholders? A. Yes.

Q.25. Now, you also became familiar with the fact that on February 1st or thereabouts, 1936, the federal court entered a decree approving this settlement and ordering distribution in accordance with the terms thereof? A. Yes, sir.

(Photostatic copy of check, handed to the reporter, was marked for identification as "Defendants' Exhibit 164, EFM.")

Q.26. (By Mr. Holman) Now, Mr. Plessner, I will hand you Defendants' Exhibit 164, which I now offer in evidence, and ask you to identify that and explain what it is please. A. I do identify that check as being issued from our office.

Q.27. A photostatic copy of a check issued from your office? A. Yes, sir.

Q.28. To C. R. Street, Agent? A. Yes, sir.

Q.29. You signed that check, as one of the officers? A. Yes, sir.

(Which said Defendants' Exhibit 164, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

NORTHERN INSURANCE COMPANY
OF NEW YORK
FOR DEPOSIT WITH
CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO
PAID THROUGH CHICAGO CLEARING
DOLLARS

12/164

Q.30. How did it come about that you had that check issued? A. On March 23, 1936, a representative from Mr. Haid's office handed me a check for $8,006.00. I do not recall the cents.

Q.31. 11 per cent of your impounded premiums? A. I did not so recognize it as 11 per cent, and requested a check drawn to the order of C. R. Street, Agent, for $3,639.20.

Q.32. Did you recognize that as being 5 per cent of your impounded premiums? A. I did not.

Q.33. Who was this representative? A. Erskine.

Q.34. Mr. Erskine? A. Yes.

Q.35. Did he come to your office? A. He came to our office.

Q.36. Talked with you personally about it? A. Yes.

Q.37. Now, did you say what he told you this check was to be used for, this $3,600.00 check? A. No, sir.

Q.38. Did you ask him what it was to be used for? A. Yes, sir. Not what it was to be used for. I asked him what it represented, and he said he knew nothing about it.

Q.39. Well, did he explain why he was collecting this money? A. He said he was just a messenger to give the $8,000.00 check and to receive this one in return.

Q.40. Didn't you understand, didn't you have some idea of what it was for? A. In my mind?

Q.41. Yes. If—

The Special Master: Wait a minute, he hasn't answered your question.

A. I had an idea that Street and Folonie were trustees and perhaps Mr. Folonie was retiring as a trustee and that the matter was now going to be carried on by Mr. Street individually.

Q.42. Where did you get that idea? A. That is in my mind. I say it is based on nothing.

Q.43. I say, what caused that to come into your mind? A. You mean at the time?

Q.44. Yes. A. No, not at the time. This is subsequent to that.

Q.45. Well, now, what did you think that money was for when you caused that check to be issued? A. So as—when it was called for?

Q.46. Yes, at that time. A. Just so as to establish that account.

Q.47. At the time Mr. Erskine—

The Special Master: I don't understand his last answer.

Mr. Holman: Well, I don't either. Go ahead.

The Special Master: He means something by it. Now, let him tell what he means. You said just to establish that account. I didn't understand that. Can you make it any plainer?

A. Yes. I knew that Mr. Street and Mr. Folonie were trustees and now a check is requested for C. R. Street, Agent, and I thought perhaps that this check written to Mr. C. R. Street was to establish an account that he was going to act individually and Mr. Folonie was going to cease to act as a trustee.

Q.48. (By Mr. Holman) You say you finally came to that conclusion? A. No, I didn't come to the conclusion. That is the idea I had in mind based on nothing.

The Special Master: At the time you gave it you had that in your mind or later?

A. Well, when I asked I said, "Why is this thing?" I was mostly interested in the $8,000.00 check.

Mr. Bullitt: That you were receiving?

A. That I was receiving. I was mostly interested in that, as to what that represented, but Mr. Erskine couldn't enlighten me. He said he knew nothing about it.

Q.49. (By Mr. Holman) Well, can you give us any reason why you thought this was just to transfer the account to Mr. Street? A. Other than the one I have just stated.

Q.50. Well, I didn't understand you to state a reason.

The Special Master: Yes, he said that without any more evidence than just what he had, he kind of thought in his mind that maybe Folonie was retiring and Street was going to carry on and that the effect of this was to establish the account in Mr. Street's name instead of the joint account. He said he just had that in his mind.

Mr. Holman: I understand that, but I am asking him if there was anything that caused him to have that in his mind, any fact or circumstance.

A. No circumstance whatsoever.

Q.51. All right, now you paid this money over without knowing what it was for? A. Yes, sir.

Q.52. And you made no inquiry of anyone except Mr. Erskine? A. That is all.

Q.53. And he told you he couldn't tell you? A. And he could not tell me.

Q.54. Didn't it occur to you at that time that the trustees had authority to pay all of the expenses out of this 30 per cent they had gotten or did you understand? I believe I am mistaken about that. Did you have any idea at all that this check you gave to Mr. Erskine payable to Mr. Street was to pay any expenses? A. No, sir.

Q.55. You didn't have that idea at all? A. No, sir.

Q.56. You merely had the idea—you don't know where it came from—but you had the idea that it was to transfer the account in some way or other? A. Yes.

Q.57. Now, didn't it occur to you that Mr. Folonie, if he desired to retire, would just turn that money over to Mr. Street? Didn't Mr. Street have the money as a joint trustee? A. Sir?

Q.58. Didn't— A. (Interrupting) I did not know that relationship at all. I thought in my mind, I had an idea that that was a way of closing out the account and transferring it over to an individual.

Q.59. Didn't you feel that as vice-president of this company it was your duty to find out definitely about that? A. Always in the belief that an accounting would be made because in all matters, in all those transactions an accounting was later made.

Q.60. Was an accounting ever made as to this money? A. Which money?

Q.61. This money you paid to Street as agent, this check? A. No, it was not.

Q.62. Never has been made. Now, do you know when Mr. Street died? A. I do not.

Q.63. Do you know that he lived for sometime after that check was sent to him? A. I do not.

Q.64. To refresh your memory, didn't he die about February, 1938? A. That doesn't refresh my memory because I didn't have it in mind.

Q.65. Didn't you read in the insurance journals at the time he died? A. I have no recollection.

Q.66. Did you ever ask him to make an accounting? A. No, sir.

Q.67. Did you ever ask the Subscribers' Actuarial Bureau to find out what he did with it? A. No, sir.

Q.68. Did you ever ask anybody about it? A. I never asked anyone.

The Special Master: Did the fact that at the time you were getting in more money than you were paying out cause you to approach it with less caution than if it had been the other way around?

A. No, because the accounting in this whole matter, to my mind, was rather dilatory, anyway. You never had a direct accounting or an immediate accounting, but always it came eventually.

Q.69. (By Mr. Holman) Now, is there anyone in your office that knows any more about this than you do? A. No.

Q.70. Is there anybody else in your office that knows anything about it? A. No, sir.

Q.71. Your company's transaction in regard to this rate litigation? A. No, sir.

Q.72. Have you told everything you know about it? A. Everything.

Q.73. Did you attend this meeting of insurance executives held in this office on or about May 2, 1935? A. No, sir.

Q.74. To discuss the Missouri litigation? A. No, sir.

Q.75. Have you attended any meeting to discuss this Missouri litigation? A. No, sir.

Q.76. Or the settlement of it? A. No, sir.

Q.77. Have you talked it over with other insurance executives? A. No, sir.

Q.78. You have told us absolutely everything you know about it? A. Everything, unhesitatingly.

Q.79. That you paid that money over and you didn't know what it was to be used for? A. No.

Q.80. And didn't make any effort to find out except to ask Mr. Erskine? A. That is all.

Mr. Holman: That is all.

The Special Master: I failed to note at the beginning of your testimony which company it is that you represent.

A. The Northern Insurance Company of New York.

The Special Master: Just the one company?

A. The one company.

The Special Master: No group?

A. No group.

Cross Examination by Mr. Bullitt.

XQ.81. And it wasn't until 1935 that they made an accounting in the Hyde suit of collections prior to 1930, was it? They had been that long? A. Yes, I believe so. I can not testify as to the dates.

XQ.82. Well, isn't it a fact that they were very dilatory in making a final accounting of the Hyde litigation? You know what that is? A. Yes, sir.

XQ.83. And so they were equally dilatory in this one? A. Yes, sir, and, I believe, still are, because the custodian hasn't accounted for the balance of the money now.

XQ.84. And the accounting hasn't yet been finished, even in this case? A. No, sir.

XQ.85. And you paid back a large sum here the last month, haven't you? A. Yes, sir.

XQ.86. $100,000.00 or $200,000.00? A. No, ours is $78,000.00 or $79,000.00.

XQ.87. Did you or anybody in your company, so far as you know, ever authorize Mr. Street or know that Mr. Street was using any money to bribe anybody or to pay any money to anyone to induce this settlement of the rate litigation? A. No, sir.

XQ.88. Or any official? A. No, sir.

Mr. Bullitt: That is all.

(Witness excused.)

GEORGE S. ALLEN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. George S. Allen.

Q.2. Mr. Allen, you reside where? A. Reside?

Q.3. Yes. A. New York City.

Q.4. What is your connection with the Svea Fire & Life Insurance Company, Ltd., group? A. I am chief accountant.

Q.5. And this group consists of that company, Svea Life & Fire Insurance Company and the Hudson Insurance Company? A. I am secretary of the Hudson Insurance Company.

Q.6. The Svea is a Swedish company? A. Yes, sir.

Q.7. And the Hudson company is an American company? A. A New York company.

Q.8. Does the first named company own the stock of the American company? A. Well, they own practically 25 per cent of it.

Q.9. And is there a common management out of the same office? A. Yes, sir.

Q.10. What was your connection with these companies in 1935 and 1936? A. The same as I said before.

Q.11. Who is the resident manager of these companies? A. J. W. Wennstrom.

Q.12. Where is he? A. At the present time he is at his home.

Q.13. What is his physical condition? A. From June 1st he hasn't been in the office, with a very bad heart attack.

Q.14. He is considered quite ill, is he? A. Yes, sir.

Q.15. He will be unable to appear and testify? A. We don't expect him back to the office until around October 1st.

Q.16. And he will not be able to appear and testify in this hearing prior to October 1st, according to your information at this time? A. No, sir.

Q.17. Well, in your connection with the company did you have knowledge of the Missouri rate litigation? A. Yes, sir.

Q.18. And the general details of it? A. I handled all of the details of it.

Q.19. You have all of the knowledge that the company has in regard to it? A. Yes, sir.

Q.20. Did you know anything about negotiations or a settlement in the early part of 1935? A. No, sir.

Q.21. You did learn that a settlement had been effected by way of compromise, did you? A. When I received the letter from the Subscribers' Actuarial Bureau, etc., yes, sir.

Q.22. In 1935 following the compromise agreement, or was that after the court decree had been entered? A. After the court decree had been entered.

Q.23. Do you recall that was about February of 1936? A. February or March, or so, I received some checks, etc., from the custodian.

Q.24. That represented 11 per cent of your impounded premiums, as you recall? A. That was in the early part of 1938 I received a good part of the impounded premiums, about 45 percent.

The Special Master: 1938, you said. You don't mean that, do you?

A. I mean 1935.

The Special Master: That is right.

A. 1936, the early part of 1936.

Q.25. (By Senator Hollingsworth) You knew the terms of the settlement, I assume? A. Yes, sir.

Q.26. Some percent to the policyholders? A. Yes, sir.

Q.27. 50 per cent to the companies outright? A. Well, we didn't get 50 per cent; we got about 45.

Q.28. Some part was held back by the custodian? A. Yes.

Q.29. Then you knew that 30 per cent was placed in the hands of trustees? A. Yes, sir.

Q.30. Did you know their names, Folonie and Street? A. Folonie and Street, yes, sir.

Q.31. What was the purpose of the 30 per cent? A. I presume to pay legal fees, and etc., of all expenses.

Q.32. You so understood when you got the letter, didn't you? A. Yes, sir.

Q.33. It was to pay the expenses of the litigation? A. Of the litigation, yes, sir.

Q.34. Then after receiving the custodian's check for some 45 per cent did you receive an 11 per cent check? A. I did through the hands of Mr. Wennstrom.

Q.35. Through the hands of Mr. Wennstrom? A. Yes, sir.

Q.36. And do you know how Mr. Wennstrom received it? A. Yes, sir, I do.

Q.37. How? A. Through Mr. Paul Haid's visiting the office.

Q.38. Mr. Paul Haid made a personal call at the office, did he? A. Yes, sir.

Q.39. And did he have a conversation there with you? A. Not with myself but with Mr. Wennstrom.

Q.40. Were you present? A. Not at the time of the conversation, no, sir.

Q.41. Were you called into the room? A. I was, sir.

Q.42. What information did you receive when you came into the room? A. Mr. Wennstrom said to me, he said, "Here is a check for 11 per cent of the impounded premiums" and requested me to draw a check for 5 per cent to the order of C. R. Street as Agent.

Q.43. Did he tell you what that 5 per cent was for? A. No, sir.

Q.44. Did he reveal any of his conversation to you that he had had with Mr. Haid? A. No, sir.

Q.45. Was there anything else said between you there at that time? A. Not at the time Mr. Haid was there, no, sir.

Q.46. Did you thereupon issue checks for both of your companies? A. Yes sir.

Q.47. For the 5 per cent? A. That is right, sir.

(Photostatic copies of checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 165 and 166, EFM.")

Q.48. I hand you Defendants' Exhibits 165 and 166 and ask you to state if they are the photostatic copies of the checks for each of your companies for 5 per cent? A. Yes, sir.

Q.49. Payable to C. R. Street, Agent? A. Yes, sir.

Q.50. Was there any requisition made for those checks? A. No, sir.

Q.51. Is the practice of your company to have requisitions for checks? A. Under certain circumstances, yes, but where we are receiving money and paying out a proportion of it, no, sir.

Q.52. That is where you received a check? A. Yes, sir.

Q.53. And pay out a portion of the check, you don't have any requisition? A. Purely authority of the officers of the company.

Q.54. Did you receive any information at that time what this check was for? A. No, sir.

Q.55. And don't have any now? A. No, sir.

Q.56. All you knew was that it was in connection with the Missouri impounded premiums? A. Yes, sir.

Q.57. You didn't know what purpose Street was to use it for at all? A. No, sir.

Q.58. Whether it was to pay for transcripts of records or what, you didn't know? A. Oh, I presumed it was for expenses, but what expenses I couldn't say.

Q.59. Now, did you afterwards have a conversation with Mr. Wennstrom? A. Yes, we talked it over after Mr. Haid had left.

Q.60. What talk did you have? A. Well, we just said that apparently the 30 per cent was too much to take care of expenses, and, therefore, they were refunding this 11 per cent and that Mr. Street undoubtedly had expenses other than through the trustees Folonie and Street, and he was paying them directly. That is all we figured it out to be.

Q.61. That he had expenses what? A. Other than the trustee expenses.

Q.62. What expenses could you think of that that might be? A. That I couldn't say, sir; I wouldn't know.

Q.63. You didn't know? A. No.

Q.64. And Mr. Wennstrom talked there with you. He didn't have any light on the matter at all? A. No, sir, none whatsoever.

Q.65. Well, did Mr. Wennstrom reveal to you that Mr. Haid had not told him what it was for? A. No, sir, he did not.

Q.66. But when you talked to him he didn't know what it was for? A. No, sir, he did not.

Q.67. And it was because of the lack of knowledge of both of you that you had a further conversation in which you speculated about what it was for? A. Well, due to the fact that we wanted to get this Missouri impounded premium out of the way and that we had withdrawn from the state in the year of 1932.

Q.68. But you and Mr. Wennstrom talked it over? A. Yes, sir.

Q.69. And neither of you had any information what it was about? A. No, sir, none at all.

Q.70. And on speculation you thought it might be some expenses that Mr. Street was obligated for in addition to the expenses set up in the 30 per cent trust agreement? A. That is true, sir.

Q.71. Well, you knew that the 30 per cent trust agreement provided for payment of all litigation expenses on both sides, did you not? A. No, I didn't know that, sir.

Q.72. You didn't know that? A. I knew there was 30 per cent set aside for litigation expenses, yes.

Q.73. Did you and Mr. Wennstrom go get the circular letter which you had to check up on that matter in any way? A. When we received the second letter?

Q.74. No, when you had your conversation. A. No, sir.

Q.75. After the issuance of the checks? A. No, sir.

Q.76. You made no further effort to find out what it was all about? A. No, sir.

Q.77. Mr. Street was your agent in charge of this litigation? A. That I couldn't say, sir.

Q.78. Well, you made the check to C. R. Street, agent? A. That is true.

Q.79. Why did you happen to use the word "agent"? A. We were asked to draw the check that way.

Q.80. Well, you constituted him your agent for the purpose of disbursing this money? A. I presume so, yes.

Q.81. Did you ever after that attempt to ascertain the purpose for which this money had been paid out by Mr. Street? A. No, sir.

Q.82. Was there any promise of any accounting made by Mr. Haid? A. No, sir, not that I know of.

Senator Hollingsworth: I now offer in evidence Defendants' Exhibits 165 and 166.

(Which said Defendants' Exhibits 165 and 166, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

159

United States Branch

Svea Fire & Life Insurance Co, Limited.

New York, APR 2 1898 No. 4087

Pay to the order of L. R. Thiel, Agent $ 647 90/100

EXACTLY $ 647 & 91 CTS

The New York Trust Co 1-114

316

Secretary Assist. Secretary Manager Manager

RECEIVED PAYMENT

CITY NATIONAL BANK

The First National Bank

Endorsed

L. R. Thiel

Pd

Dividend Warrant

No. 95761

Pay to the order of

APR 4, 1888

DOLLARS 615 66 CTS

318

To THE NEW YORK TRUST COMPANY

1-114

C R Street agent

THE FIRST NA

OF THE CITY

APR 13

D166

Q.83. Was there any report made by you to your home office in Sweden or elsewhere in regard to this transaction? A. Only through the bookkeeping methods.

Q.84. No correspondence about it? A. No, sir.

Q.85. Nor no explanation of it to the home office? A. No, sir.

Q.86. Who had charge of the litigation for your company in the way of directing it and telling the attorneys what to do? A. Well, I think I was the one that attended all meetings, as far as that is concerned.

Q.87. What meetings? A. Long prior to the settlement.

Q.88. No, I mean— A. (Interrupting) Whatever meetings we might have had, I attended.

Q.89. Do you know that the Subscribers' Actuarial Committee had active charge of it? A. Oh, yes, I know that, sir, yes.

The Special Master: I think he testified that at the beginning of the testimony, didn't he?

Senator Hollingsworth: I think so.

A. Yes.

Senator Hollingsworth: I had forgotten.

The Special Master: He mentioned who the trustees were and all about those things.

Senator Hollingsworth: I think that is all.

Cross Examination by Mr. Bullitt.

XQ.90. The interest of your companies in this litigation was very small from a money standpoint, wasn't it? A. Well, our total impounded premiums amounted to about $13,000.00, each company. Of course, we ceased writing direct business in the latter part of 1932.

XQ.91. And the total impoundings were only about $25,000.00 all told? A. For the two companies, yes, sir.

XQ.92. And you got back from that around $15,000.00? A. Something like that, yes.

XQ.93. And returned to Mr. Street $1,263.00 of what you call "expenses"? A. A little over $600.00 each company.

XQ.94. Did you or anybody connected with your company, as far as you know, ever authorize Mr. Street to pay any money in the way of bribery or any other improper way to influence any official to agree to this settlement? A. No, sir, absolutely not.

XQ.95. Do you know anything about that at all? A. No, sir.

Mr. Bullitt: That is all.
Senator Hollingsworth: That is all.
(Witness excused.)

HENRY J. WYATT, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. State your name, please. A. Henry J. Wyatt.

Q.2. Mr. Wyatt, you are now and were in 1935 and 1936 connected with the Crum and Forster group? A. That is right, sir.

The Special Master: That is a management group?

Q.3. (By Judge Henson) I thought I would call them off here. I will ask you if the British America Assurance, North River Insurance Company, United States Insurance Company, Westchester Insurance Company, the Western Assurance Company, United States Merchants & Shippers Company, if that constitutes the group? A. It does. The Merchants & Shippers has been merged with the Westchester.

The Special Master: That is the way it was in 1935 and 1936, is it?

A. Yes—no, the Merchants & Shippers was merged in 1932, I think.

The Special Master: When you say they were merged, which company survived?

A. The Westchester.

The Special Master: All right.

Q.4. (By Judge Henson) But anyhow, the United States Merchants & Shippers were in during a part of the period of impoundment? A. Yes.

Q.5. And had some funds in the Missouri impoundment rate case? A. That is right.

Q.6. Now, who was in active charge of it, this Missouri litigation, for your group? A. Our Western Department Manager, Mr. F. M. Gund.

Q.7. Where does Mr. F. M. Gund live? A. At Freeport.

Q.8. Now, Mr. Wyatt, I will ask you if you knew anything about negotiations which were to lead to a settlement of the Missouri rate litigation at the time the negotiations were on? A. I had no knowledge.

Q.9. Did you attend the Insurance Executives' meeting on or about May 2, 1935, in Mr. Paul Haid's office here in New York? A. No, sir.

Q.10. Did anyone report the substance of that meeting to you? A. No, sir.

Q.11. Are you aware of the fact that at that meeting some large portion of $100,000.00 was raised in connection with the Missouri rate litigation through the efforts of Mr. Street and Mr. Haid? A. Not at that time, no, sir.

Q.12. When did you hear about that, Mr. Wyatt? A. Mr. Parsons asked me to have a check drawn for $5,000.00. That was May 2nd, I believe.

Q.13. May 2, 1935? A. Yes, sir.

Q.14. Now, who is Mr. Parsons? A. He is the president of our office.

Q.15. The president of your office? A. Yes, sir.

Q.16. What are his initials? A. J. Lester.

The Special Master: His name was mentioned by some of the other witnesses, if I remember correctly.

Judge Henson: There was a Parsons named somewhere.

Senator Hollingsworth: As having attended.

Q.17. (By Judge Henson) Do you happen to know whether Mr. Parsons attended the New York meeting? A. Yes, sir.

Q.18. Where is Mr. Parsons now? A. He is in the Hawaiian Islands.

Q.19. When do you expect him back? A. August 15th.

Q.20. Now, you say he was the one that directed the writing of the check for $5,000.00? A. Yes, sir.

Q.21. Is that the extent of the information you have as to why the $5,000.00 check was written? A. Well, Mr. Parsons told me it was for account of legal expenses.

Q.22. It was on account of legal expenses? A. Yes, sir.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 167, 168, 169, 170 and 171, EFM.")

Q.23. What is your connection with the companies? A. Vice-president.

Q.24. Was that your position in 1935 and 1936? A. Yes, sir.

Q.25. First I show you Defendants' Exhibit 167, which I now introduce in evidence, that is, above this line (indicating), and will ask you if that is a photostatic copy of the $5,000.00 check about which you have testified, and if this is a photostat of the endorsements on the back of that check. A. It is.

Q.26. Now, I show you Defendants' Exhibit 168, which I now offer in evidence. It is on the same sheet of paper, as you notice, but below the copy of the check. I will ask you what this memorandum is there? A. The portion of that legal expense of $5,000.00 spread over the premium income of these companies.

Q.27. You have given the proportion of the premium income of the companies in percentages and figured it out here in dollars and cents what it takes to make the $5,000.00? A. Yes, sir.

(Which said Defendants' Exhibits 167 and 168, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

185

CRUM & FORSTER

MANAGERS
[illegible] WILLIAM STREET

NO. 14

THE MARINE MIDLAND TRUST COMPANY OF NEW YORK.
WILLIAM STREET OFFICE

NEW YORK, N. Y. May 2, 1935

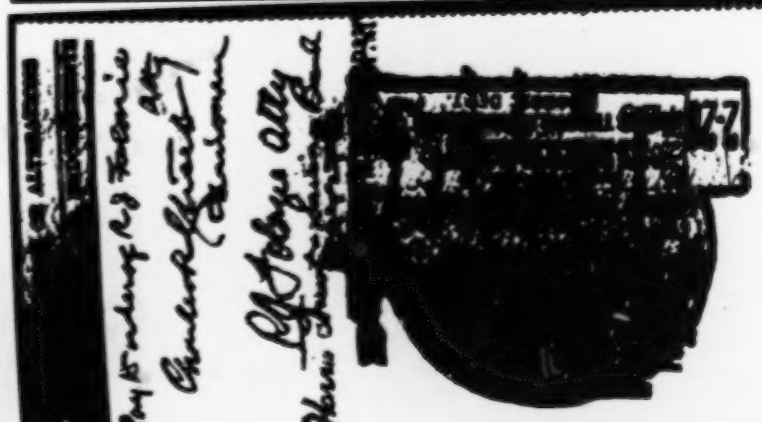
$ 5,000.00

PAY TO THE ORDER OF CHARLES B. STREET, Chairman

Five thousand and No/100 - - - - - - - - - DOLLARS

[signature]
VICE-PRESIDENT
ASST. SECRETARY

[signature]
VICE-PRESIDENT
ASST. SECRETARY



D 167

Missouri Impounded Basin.

As of 3/31/35

Allen-Morris	$ 12738.06	3.77%
British	10534.74	3.12%
North River	63.385.42	18.72%
Richmond	13.410.74	3.96%
Ustine	144.731.76	42.76%
Western	17.281.94	5.11%
Westchester	76.383.13	22.56%
	$ 338.465.79	100.00%

Allen	1885.0	X.
BA	156.	
No R	936.	
Red	198.	X
US Bue	2138.	
Wa.	255.50	
Weld	1128 —	
	5000	

8912

The Special Master: Let me ask you right here, were all of the companies with which your corporation had a management contract, in the federal court cases, or were some of them in the state court case?

A. Some were in the state court cases.

The Special Master: How was this apportionment made, without regard to the federal cases?

A. Yes, sir.

The Special Master: Just according to all of them, regardless of where they were, is that right?

A. That is right.

Q.28. (By Judge Henson) I don't suppose you could name these that are in the state and which are federal? A. Yes, sir, I could.

Q.29. Just name the state? A. Allemannia of Pittsburgh and the Richmond of New York.

The Special Master: Were in the state court?

A. Yes, sir.

Q.30. (By Judge Henson) The rest of them were in the federal court? A. May I explain? We noticed this error and subsequently corrected this $396.00 at a later date.

Q.31. What you are just now saying to me, there was a little inaccuracy in your percentage on one of these which you later corrected? A. In the state.

Q.32. It is not material, but am I right as I put your statement in the record?

The Special Master: That is of no consequence.

Judge Henson: No, he stated it, and I thought if you wanted it in I would repeat it for him.

Q.33. Now, I show you Defendants' Exhibit 169, which I now introduce into evidence, and will ask you what that is. A. That is the carbon copy of the check with the office voucher attached to it.

Q.34. That is the carbon copy of the check about which you have testified, and this part (indicating) is the voucher attached to it? A. Yes.

(Which said Defendants' Exhibit 169, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

34

THE MARINE MIDLAND TRUST COMPANY OF NEW YORK
WILLIAM STREET OFFICE 1-168

NEW YORK, N. Y. May 2, 1945

THE ORIGINAL OF THIS VOUCHER IS TO THE ORDER OF CHARLES B. STREET, Chairman

$ 5,000.00

Five thousand and No/100 - - - - - - - - - - DOLLARS

AUDIT OFFICE COPY

CRUM & FORSTER
MANAGERS
110 WILLIAM STREET NEW YORK, N. Y.

REMITTANCE ADVICE

DATE	PARTICULARS	AMOUNT

ACCOUNT	AMOUNT	ACCOUNT	AMOUNT
Ind. & Cos.	$5,000.00		

AUDITED

APPROVED FOR PAYMENT

Q.35. Will you explain what this "Ind" character is, and "Cos"? A. That refers to the individual and company's account in the ledger.

Q.36. Are your initials on this anywhere? A. No, sir.

The Special Master: That isn't any plainer to me than it was before. What do you mean by "individual and company's account"?

A. Any money that is due to us from the companies is temporarily carried in the individual and company's account on Crum & Forster's ledger, then later on we collected it from our companies.

The Special Master: In other words, that was an advancement by your corporation which was to be charged to one or more of the companies?

A. That is right.

The Special Master: Which you managed?

A. Yes, sir.

The Special Master: I understand it. Go ahead.

Q.37. (By Judge Henson) Was there anything on that Exhibit 169 which you see that tells what this $5,000.00 was for? A. No, sir.

Q.38. Now, I show you Defendants' Exhibit 170, which I now introduce in evidence, and will ask you what that is. This is a photostat of a check, evidently. A. That represents the check that was issued on the memorandum that came from Mr. Paul Haid's office on March 21st.

Q.39. 1936? A. Yes, sir.

Q.40. All right, for $6,419.41? A. Yes.

Judge Henson: Now, I include in my offer this memorandum that is on the same sheet, I didn't see in time to have it marked separately.

Q.41. Will you explain in whose handwriting this is? A. It is Mr. Paul Haid's handwriting, except this across here (indicating).

Q.42. Whose is that? A. That is mine.

Q.43. And this was yours? What does it say? A. It says, "To be advanced by Crum & Forster until repaid by companies, H. J. W."

(Which said Defendants' Exhibit 170, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

CRUM & FORSTER
MANAGERS
110 WILLIAM STREET

NO. 173

THE MARINE MIDLAND TRUST COMPANY OF NEW YORK
WILLIAM STREET OFFICE 1-108

NEW YORK, N. Y. March 21, 1936

$ 6,419.41

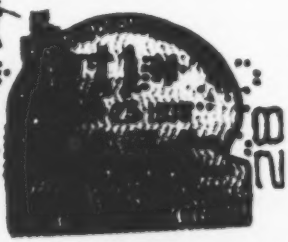
PAY TO THE ORDER OF C. R. Street, Agent

-----Six thousand four hundred nineteen and 41/100----------N.Y. DOLLARS

Harold Grumbar
VICE PRESIDENT
ASST. SECRETARY

VICE PRESIDENT
ASST. SECRETARY

C.R. Street agent



N45

RECEIVED PAYMENT
THROUGH NEW YORK CLEARING HOUSE
CONDITIONS AS TO INDORSEMENTS GUARANTEED

MAR 24 1936

THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
1-74

Check to C.R. Street Agent

amt - 11419 41

Recouped payment - 5000 00

Balance 6419.41

to be C/O Check by C/O Check until replaced by company

D/50

Q.44. I show you Defendants' Exhibit 171, which I now introduce in evidence, and will ask you what that is. A. That is a carbon copy of the check just referred to and the office voucher.

Q.45. The office voucher is the same way, "Ind" and "Cos"? A. Yes, sir.

(Which said Defendants' Exhibit 171, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

173

THE MARINE MIDLAND TRUST COMPANY OF NEW YORK
WILLIAM STREET OFFICE 1-108

NEW YORK, N. Y. March 21, 1936

$ 6,419.41

THE ORIGINAL OF THIS VOUCHER TO THE ORDER OF C. R. Street, Agent

-----Six thousand four hundred nineteen and 41/100---------- DOLLARS

AUDIT OFFICE COPY

CRUM & FORSTER
MANAGERS
110 WILLIAM STREET, NEW YORK, N. Y.
REMITTANCE ADVICE

DATE	PARTICULARS	AMOUNT
3/21/36		$6,419.41

ACCOUNT	AMOUNT	ACCOUNT	AMOUNT
Ind. & Cos.	$6,419.41	OFFICE COMMITTEE	

AUDITED AND [illegible]

APPROVED FOR PAYMENT

ACCOUNTANT

FM 4-0-1-M

D, 171

Q.46. Getting back to the $5,000.00 check, what did you do with that check after it was issued? A. I think I turned it over to Mr. Parsons. I am not sure.

Q.47. Do you have any memory of its delivery? A. No, sir.

Q.48. You had nothing to do, you are sure, with its delivery? A. I am a little uncertain about that, sir.

The Special Master: He didn't say he was sure. He said that he believed he turned it over to Mr. Parsons, but he was not sure.

Q.49. (By Judge Henson) Let me ask you if the name, Mr. Erskine of Mr. Haid's office, prompts your memory any or is suggestive. Does that suggestion of his name call to mind that you delivered it to him? A. No, sir.

Q.50. You don't think you delivered it to Mr. Erskine? A. No, sir.

Q.51. Do you think you delivered it to Mr. Haid? A. I don't recall, sir.

Q.52. You think the last time you saw it was in Mr. Parson's hands? A. I think so.

Q.53. Now, I wish you would state the circumstances, so far as you know, regarding this check of March 21, 1936, marked Exhibit 170, and tell us what you remember about the issuance and delivery of that check. A. That is the second check?

Q.54. Yes, sir. A. Mr. Paul Haid called me on the telephone and told me he was sending over some checks and a memorandum to get the amount of money that was called for by that memorandum and that he would like to have that check that particular morning. It was on a Saturday morning.

Q.55. Did I understand you to say he was sending a memorandum? A. Yes, sir, with the checks.

Q.56. Have you that memorandum? A. I think it is here.

Mr. Bullitt: It is photostated there.

Judge Henson: If you are the witness, all right.

Mr. Bullitt: There it is, March 21, 1936. You have it right there in front of you.

Judge Henson: I see. This part of Exhibit 170, of course, I can see now is another sheet of paper. Here it is, your Honor. I didn't see that.

The Special Master: Yes, I knew that.

Judge Henson: Well, I didn't catch that.

The Special Master: That is your mistake. Every man is entitled to a mistake. Now, you have made yours.

Q.57. (By Judge Henson) Now, this memorandum says, "Check to C. R. Street, Agent," and this amount, this figure, $11,419.41. What did you understand that figure to be? A. The legal expense charge.

Q.58. Well, was that 5 per cent of all of the impoundments that Crum & Forester had? A. I don't recall, sir.

Q.59. What was the total? A. Yes, it was 5 per cent.

Q.60. That was 5 per cent. Then what does this "Previous payment, $5,000.00"— A. (Interrupting) That refers to the first check.

Q.61. You understood you were to have credit for that? A. Yes, sir.

Q.62. Then that makes the amount for which check was sent? A. That is right.

Q.63. Now, I wish you would tell me again—I can't read your writing, if you will pardon me—what it is you put on there. A. "To be advanced by Crum & Forester until repaid by companies."

Q.64. Well, who gave you that idea that it might be repaid by the companies? A. Well, I didn't know at the particular time how much each company would have to pay of that charge.

Q.65. That, I believe you say, was on Saturday morning. Now, Mr. Wyatt, did you talk to Mr. Haid on this occasion when he called for this 5 per cent check? A. Yes, sir.

Q.66. What did he tell you that it was for? A. I understood it to be for account of legal services, legal expenses.

Q.67. And where did you get the idea that this check was to be made by you until—

The Special Master: To be advanced by Crum & Forester.

Q.68. (By Judge Henson) Until repaid by the companies? A. Yes, sir.

Q.69. Where did you get that idea? A. Well, that was my own idea; I couldn't tell what each one of these insurance companies should pay of that particular amount.

The Special Master: I understand that, Judge. Saturday morning they called for an amount and said they wanted it right now. Now, it would take a calculation to determine how much each company would be charged

with, but he was going to issue it right now. Now, the only way he could handle it would be to advance it and make the calculation later and then charge it up against the companies after the calculation was made. Am I right about that?

A. That is correct.

Q.70. (By Judge Henson) I take it for granted that was the object in putting that on there? A. Yes.

Q.71. I am not near as familiar—

Mr. Berger (Interrupting): That is why all those sheets are back showing, why they are accounted.

The Special Master: It is the same way when the parent makes an advance for the parent group. They have to pay it out of their account. Then when they have made the allocation they charge it where it belongs.

Q.72. (By Judge Henson) Mr. Wyatt, when did you get the first information regarding the fact the rate case was settled? A. I can't recall just the time. It must have been sometime just before the last memorandum came in.

Q.73. You had some intimation that negotiations were on hand for a settlement when you made the $5,000.00 check in May, 1935, didn't you? A. No, sir, I didn't.

Q.74. What did you have an idea that check was for? A. I understood it was on account of legal expenses.

Q.75. What do you mean, expenses of your own lawyers? A. Why, the lawyers handling this particular case.

The Special Master: Understand, he didn't authorize that check. He was told by the president that it was authorized.

Q.76. (By Judge Henson) Then getting back to the settlement, I assume that your information about the settlement must have come about February 1, 1936, assuming that February 1, 1936, was the date the court made the order of distribution of the impounded funds. I am saying to you that that is in the record, February 1, 1936, is the date that the federal court made the order distributing your impounded funds. Now, how soon after that was it that your company was given knowledge of this distribution which was to be made? A. What distribution are you referring to?

Q.77. I refer to the distribution authorized by the federal courts.

Mr. Bullitt: Are you talking about the 50 per cent or the 11 per cent?

The Special Master: He is talking about the authorized distribution.

Q.78. (By Judge Henson) Let me state it this way, I want to be perfectly fair: The federal court decree authorized 50 per cent paid back to the companies, 20 per cent to the policyholders and 30 per cent to be reserved by trustees for expenses which were to be paid out of that, and if any remained it was to go to the companies. That was something now in the nature of a distribution that the federal court made. When, with reference to that federal court order, was it that you got that knowledge, if you did get it? A. I suppose it must have come soon after that order was issued.

Q.79. I imagine so. Now, were your companies paid the 50 per cent that is provided in that order? A. Yes, sir.

Q.80. Of the impounded premiums up to May 1, 1935? A. Yes, sir.

Q.81. And did you later get a dividend of 11 per cent of your impounded premiums to May 1, 1935, from the trustees, Street and Folonie? A. Yes, sir.

Q.82. When did you get that 11 per cent from Street and Folonie with reference to when this check was made for $6,419.00? A. I think it came in at the same time that the voucher came over.

Q.83. That was sent by the same messenger that brought the memorandum from Mr. Street, identified here on Defendants' Exhibit 170, isn't it? A. Yes, sir.

Q.84. What did Mr. Haid say to you at that time on the telephone? A. He told me he was sending those checks over that you just referred to and he would like to have a return check for the $6,400.00.

Q.85. I believe you said he wanted it immediately? A. Yes, sir.

Q.86. What further explanation did he make as to the use of that check? A. I don't recall, sir.

Q.87. Did he assure you other companies were paying in the same proportion? A. I don't think he mentioned that.

Q.88. You don't think he did? A. No, sir.

Q.89. You think he said it was for legal expenses? A. Yes, sir.

Q.90. It is not on his memorandum, legal expenses, but you think that is what he told you? A. Yes, sir.

Q.91. What, if any, reason occurred to you why Mr. Haid didn't write to you so that he would have some correspondence reflecting it instead of which he telephoned you? A. I had the utmost confidence in Mr. Haid, and when he sent that memorandum over, I had no occasion to question it.

Q.92. Is that the reason you wrote the check? A. Yes, sir.

Q.93. Participated to the extent that you did in it? A. Yes, sir.

Q.94. How extensive was the conversation, if any, between Mr. Haid and Mr. Parsons, or was the telephone conversation entirely with you? A. Mr. Parsons was not there that morning.

Q.95. I see.

The Special Master: As I understand, Mr. Parsons had nothing to do with this check for 5 per cent, but Mr. Parsons did arrange for the original $5,000.00.

Judge Henson: That is true.

The Special Master: And all he did was to pay it out because Mr. Parsons told him to.

A. Yes.

The Special Master: Am I right about that?

A. That is right.

Q.96. (By Judge Henson) Now, when this $6,000.00 check was requested, did Mr. Parsons know anything about it, so far as you know? A. No. sir.

Q.97. Is there anybody else in your office that knows anything about it besides you? A. I had that voucher approved by Mr. Junker of our office in order to get the two signatures on the check.

Q.98. In the course of conduct in your office, it requires two signatures on a check? A. Yes, sir.

Q.99. And Mr. Junker signed it on the assurances from you? A. Yes, sir.

Q.100. So that all that induced the issuance of this six odd thousand dollar check was what was said to you by Mr. Haid and what you said to Mr. Junker, that accomplished the issuance of the check? A. In addition to the memorandum that was attached to the check.

Q.101. At that time you knew that that 30 per cent of all of your impoundments was set apart in the hands of the trustees to pay all legal expenses and other expenses of the litigation, with any overplus to go back to the companies. You knew that, didn't you? A. Yes, sir.

Q.102. And you knew your 11 per cent was a sum of money out of that 30 per cent which was not required for expenses at the time you got it? A. That is right, sir.

Q.103. Well, what did it occur to you that this $6,000.00 check could be for? A. Well, I didn't pay much attention to the question of whether it was deducted from that sum or whether it was called for a special check or what. It never occurred to me; it never made any difference, as a matter of fact.

Q.104. It made no difference that you got a check from the trustees for 11 per cent and that you gave a check to Mr. Street, Agent, for 5 per cent? A. No, sir, it did not.

Q.105. That would indicate to you that it wouldn't go back into it?

Mr. Bullitt: But he said he didn't—

Judge Henson (Interrupting): Well, that is what I—

Mr. Bullitt: No, he said it didn't, he didn't—

The Special Master: No, he is asking him and he is giving the answer.

Judge Henson: I see no occasion for interruption at all.

The Special Master: I don't either.

Mr. Bullitt: Well, it wasn't this 5 per cent; I understood that.

The Special Master: Oh, yes, I know, but he wasn't misled by that, just these little mistakes in words, but they don't mislead anybody.

Q.106. (By Judge Henson) You received an 11 per cent check from the trustees' fund. You have just stated that before I was interrupted? A. Yes, sir.

Q.107. You issued a check out of your own funds for 5 per cent, payable to Mr. C. R. Street, Agent? A. That is right, sir.

Q.108. You could see by that that it didn't go back, the 5 per cent check you were issuing wouldn't go back into a trustees' fund unless they put it there, wouldn't you? A. I had no idea what they were going to do with it.

Q.109. You had no idea what was going to be done with it? A. No, sir.

Q.110. Why was it made to C. R. Street, Agent? A. Well, I have no idea except that probably to distinguish it from any personal account that he might have.

Q.111. That is to say that it wouldn't go back into the trustees' fund, is that right? A. No, not necessarily, I mean his personal account, not a trustee account.

Q.112. Well, making it payable to C. R. Street then would keep it out of the personal account, as you understood it, and it would also keep it out of the trustees' account, wouldn't it? A. I have no knowledge what they were going to do with it, that is, so far as the accounts were concerned.

Q.113. Anyway, you issued a check to a different account than the one from which you had received the 11 per cent check? A. Yes, sir.

Q.114. That is obvious. Now, whose agent was Mr. Street for the payment of this $6,000.00 check that is marked Exhibit 170? A. I suppose he was acting for the companies.

Q.115. And that means the companies that you represented? A. Yes, sir.

Q.116. You were willing that he should? A. Well, to a certain extent.

Q.117. Well, did you put any limitations on him? A. No, sir.

Q.118. Then it was to a full extent, wasn't it? A. No, sir, we wouldn't expect him to abuse any authority.

Q.119. Well, I didn't ask about that. You asked him to take that and use it as he chose, didn't you? A. No, sir.

Q.120. What did you expect him to do with it? A. To use it properly.

Q.121. And to use it properly you had that in mind at the time you issued it? A. No, sir, we did not, but I assumed it.

Q.122. But you didn't try to find out at all the particulars of what would require the $6,000.00 check? A. No, sir.

Q.123. You were aware of the fact that the impoundments, the total impoundments in the federal cases were a little above $9,000,000.00? A. Yes.

Q.124. You knew that and you knew that 30 per cent of that would be more than two and a half million dollars? A. Yes, sir.

Q.125. You knew that fund was rich enough that they had just handed back to you 11 per cent, that is, 11-30ths of the 30 per cent, I mean 11 per cent of your total impoundments, and that it was out of the 30 per cent, you knew that? A. Yes, sir.

Q.126. What other conceivable expenses could you think of that Mr. Street might need this money for? A. Why, I had no idea; there was quite an involved litigation, went back over many years, and I could see it was very closely—

Q.127. (Interrupting) Is that the only explanation now that you have? A. Yes, sir.

Q.128. Is there anybody now in your office—I believe I have asked you that—nobody else that knows anything more about this $6,000.00 check than you did? A. No, sir, I assumed full responsibility for the issuance of that check.

Q.129. And the other man's name, Mr. Junker— A. (Interrupting) He simply did—

The Special Master: You just procured him to sign it on the basis that you had approved it?

A. Yes, sir.

Judge Henson: I guess that is all.

Cross Examination by Mr. Bullitt.

XQ.130. I want to do a little arithmetic. You are pretty good at it, I guess. What was the total amount of the impounded premiums up to May 1, 1935, of all of the companies in the Crum & Forster group? A. $328,388.27.

The Special Master: Does that include those in the state court?

A. No.

XQ.131. (By Mr. Bullitt) $328,388.27.

Judge Henson: That is $328,388.27.

XQ.132. (By Mr. Bullitt) That is right. What is the 5 per cent of those impounded premiums? A. $16,-419.41.

XQ.133. How much did you, on behalf of all of your group, pay to Mr. Street? A. $11,419.41.

XQ.134. That isn't 5 per cent, is it? A. No, sir.

XQ.135. That is $5,000.00 less than 5 per cent, isn't it? A. Yes, sir.

XQ.136. And when you said to Judge Henson that you had paid back to Mr. Street 5 per cent of the impounded funds you were in error, weren't you? A. Yes, sir.

The Special Master: He means he took credit for that.

Mr. Bullitt: No, no, he didn't take credit, nothing of the kind, Mr. Master. They did not pay that amount

of money, they just never did pay it. I am just trying to make it plain.

The Special Master: Let's see about it.

Mr. Bullitt: It is perfectly obvious.

Mr. Berger: They are $5,000.00 short and always have been $5,000.00 short.

The Special Master: Yes, that is true, of course, it is.

Mr. Bullitt: I thought during the hearing when I called attention to Judge Henson's error, I knew I would have to get it straight.

The Special Master: Yes, I assumed that they all did it alike.

Judge Henson: That is the only one we have had with an error in it.

Mr. Bullitt: I am not criticizing it. I am just showing the facts, that is all. I am not criticizing you or the Master or anybody else. I am just getting the facts out as they exist.

The Special Master: Now, as a matter of fact, that is $5,000.00 less than 5 per cent?

A. It appears that way.

Mr. Bullitt: Everybody has known that except the people that didn't look at it very carefully, didn't catch it, that is all.

The Special Master: How much was the first check you paid, $5,000.00?

A. $5,000.00.

The Special Master: And the next was $6,000.00?

A. $6,419.00.

The Special Master: You only paid $11,419.00 altogether?

A. Yes.

Mr. Bullitt: Now, do a little more arithmetic, Mr. Wyatt.

The Special Master: He surely did pay $5,000.00 less than 5 per cent.

Judge Henson: That is correct. Was this $5,000.00 error ever called to your attention?

A. No, sir.

Judge Henson: Never has been paid?

A. No, sir.

Judge Henson: So if all of the other companies at that time paid in 5 per cent, yours was one company that didn't?

Mr. Bullitt: That is one company; there may be more of them.

XQ.137. (By Mr. Bullitt) Take your figures—

Judge Henson: I get a—

The Special Master: No, he is cross examining. He waited.

Mr. Bullitt: I didn't interrupt you. You didn't want to be interrupted, so I just let it go that way.

XQ.138. I will give you a few more figures in arithmetic. In round numbers how much money did the Crum & Forster group get back in cash from those impounded funds in the Missouri rate case? A. Are you referring, Mr. Bullitt, to the 50 per cent?

XQ.139. Yes.

The Special Master: Everything altogether.

A. I think I haven't it here, but I think it is $276,000.00.

XQ.140. (By Mr. Bullitt) I think you are a little wrong on that, Mr. Wyatt. What is the total impoundings, $328,000.00? A. $328,388.00.

XQ.141. Well, 50 per cent of that? A. That would be $164,694.00. That would be $164,694.00 plus.

The Special Master: Well, you got 50 per cent and then you got 11 per cent and then another 5 per cent later on, didn't you?

A. Well, the 11 per cent in '36, that is $200,000.00. My total here is a little over $200,000.00.

XQ.142. (By Mr. Bullitt) Yes, and you got that in February and March of 1936, didn't you? A. Yes, sir.

XQ.143. And in return for receiving that two hundred odd thousand in February and March, 1936, how much did you pay back to Mr. Street at that time, including what you paid in 1935 on account of this Missouri situation? A. That would be the $11,419.41.

XQ.144. That is about 5 per cent of the cash you were getting in, wasn't it? A. Approximately.

The Special Master: Well, didn't you get in another 5 per cent later on?

Mr. Bullitt: That was in 1937, a year later, but this is what we are talking about now.

XQ.145. Mr. Wyatt, did you or any member of your firm, as far as you know, or any officer of the companies you represented in your group, ever authorize Mr. Street to pay or know that Mr. Street had paid any sum of money to any public official or to any other person to bring about this May, 1935, settlement or the February

1, 1936, consent decree in the federal courts? A. We never authorized anyone.

XQ.146. And the $11,000.00 was all the money that you or your group of companies ever paid back to Mr. Street in connection with this Missouri rate litigation, isn't it? A. That is right, sir.

XQ.147. Did you or any member of your firm, as far as you know, or any of your companies in your group ever ask Mr. Street to do anything for you in connection with this litigation in Missouri? A. No, sir.

XQ.148. Isn't it a fact that when Mr. Haid or his office asked you after you had gotten the $200,000.00 back from this impounded fund, to pay over $11,000.00 to Mr. Street, that you just paid it as a part of the expenses necessary to get that two hundred odd thousand dollars? A. Yes, sir.

XQ.149. Now, isn't it a further fact, Mr. Wyatt, that when you paid Mr. Street the first $5,000.00 on May 2, 1935—

Mr. Bullitt: Or I will withdraw that question. Just strike that out.

XQ.150. When you paid Mr. Street the first $5,000.00 on May 30, 1935, in what capacity did you make out the check to him? A. Chairman.

XQ.151. C. R. Street, Chairman? A. Yes, sir.

XQ.152. Did you say that you thought that was for legal expenses? A. Yes, sir.

XQ.153. Look at the back of that $5,000.00 check and tell to whom Mr. Street in turn paid that $5,000.00. A. "Pay to the order of R. J. Folonie, Attorney," signed by Charles Street, Chairman.

XQ.154. Do you see where Mr. Folonie endorsed over to anybody? A. The Harris, it looks like it was deposited in the Harris—no, doesn't it say—or let me look at it a minute.

XQ.155. Look and see if it wasn't deposited then to the credit of Hicks and Folonie underneath the rubber stamp. A. I would have to use a glass on that, General. I can't see that. Yes, I do now, Hicks and Folonie.

XQ.156. Who were Hicks and Folonie? A. The attorneys representing the insurance companies.

XQ.157. Representing your company and your group of companies? A. Yes, sir.

XQ.158. Is that right? A. Yes, sir.

XQ.159. So it is a fact, isn't it, that the $5,000.00 that you have been asked about did go to your attorneys, Messrs. Hicks and Folonie? A. That is correct.

XQ.160. And do you know what they did with the money after they got it? A. No, sir.

XQ.161. When you made the next payment in March, 1936, you made the check payable to C. R. Street, Agent? A. That is correct, sir.

XQ.162. That was because Mr. Haid said they wanted it that way, or Mr. Erskine? A. Mr. Haid.

Mr. Bullitt: That is all I want to ask him.

Re-Direct Examination by Judge Henson.

RDQ.163. That first check was made to C. R. Street, Chairman, chairman of what, that $5,000.00 check, Mr. Wyatt? A. I assume that was chairman of the committee that was handling this litigation.

RDQ.164. That committee was handling litigation for your companies, I believe you said? A. Yes, sir.

RDQ.165. They brought and conducted and handled the suit for your companies with your authority? A. Yes, sir.

Judge Henson: That is all.

(Witness excused.)

S. CLARENCE KLINE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. State your name, please. A. S. Clarence Kline.

Q.2. Are you an official in the Tokio Marine and Fire Insurance Company? A. I am appointed an official, superintendent of agencies.

Q.3. You are now the superintendent of agencies? A. Yes, sir.

Q.4. What official position did you hold in 1935 and 1936? A. The same position.

The Special Master: Does the Tokio have a United States Manager?

A. They do.

Q.5. (By Mr. Holman) Who is the United States Manager? A. The United States Managers are Johnson and Higgins.

Q.6. Johnson and Higgins? A. Yes.

Q.7. Were they the managers in 1935? A. They were.

Q.8. And in 1936? A. They were.

Q.9. Where are they located? A. 40 Wall Street.

Q.10. Were you familiar with the Missouri fire rate litigation in 1935 and prior thereto? A. Well, anybody in the insurance business should be familiar with the litigation, yes. I knew something about the litigation.

Q.11. Did you know that on or along about May, 1935, that a settlement agreement was entered into? A. Yes.

Q.12. Did you know that about February 1, 1936, the federal court in Kansas City approved that agreement and ordered distribution of the funds in accordance therewith? A. Yes.

Q.13. Were you familiar with the terms of that settlement? A. No.

Q.14. You didn't know anything about the terms of the settlement? A. If you will permit me to make a statement—

Q.15. I will. A. I would like to say this: That under the management of Johnson and Higgins, Mr. J. A. Kelsey was appointed general agent to handle the fire business. He was familiar with the Missouri situation and through its entire course up to the end of the litigation. He was also familiar with the check which was drawn to the order of Mr. Street. He had in his employ at that time another gentleman, Mr. C. L. Henry, who was the general auditor who had charge of all of the accounts, etc. These two gentlemen are both dead, so that whatever testimony I give is just—

The Special Master: What happened to fall your way?

A. Yes.

Q.16. (By Mr. Holman) I see. Now, these United States Managers that you mention, do they know anything about it? A. Possibly; they probably do because they get accounts that go through them to the home office in Tokio.

Mr. Bullitt: Johnson and Higgins are a great big concern, brokers, that manage large numbers of companies.

Mr. Holman: Give me that name in charge.

A. Coe is the man in the firm who would probably know more about it than anybody, Mr. George V. Coe.

Mr. Bullitt: I never heard of him.

A. He is one of the vice-presidents. He is in charge of this Tokio.

Mr. Bullitt: Would you like to have Mr. Coe?

The Special Master: It was running through my mind what in the world a superintendent of agencies could know about this thing unless it is just pure accident.

Judge Henson: At the time he spoke up, if you will permit this question, would the superintendent of agency know anything other than what would be reflected in the reports passing through his hands?

A. No.

Mr. Bullitt: Did you sign the check?

A. I signed the check that was made out and first signed by Mr. Henry, the general auditor. As the check required two signatures, I signed the other.

Mr. Bullitt: As a matter of form, and you know nothing about the facts?

A. Yes, sir.

Mr. Bullitt: Does that satisfy you?

Judge Henson: But there are one or two other questions I want to ask him.

(Photostatic copy of check, handed to the reporter, was marked for identification as "Defendants' Exhibit 172, EFM.")

Q.17. (By Judge Henson) I hand you Defendants' Exhibit 172, which I now offer in evidence, and ask you if that is the check you referred to. A. That is the check.

Q.18. Do you know anything about the issuance of that check, other than what you have already stated? A. No, sir, I do not.

Q.19. You didn't talk it over with Mr. Henry? A. No, sir.

Q.20. Did you at any time talk with Mr. Henry about the Missouri litigation, talk that over with Mr. Henry or Mr. Kelsey? A. Well, it may have come up in the general course of business. I don't recall any particular conversation I had with either one of them.

The Special Master: There wasn't anything about your duties to require you to talk to them about it? A. No.

Q.21. (By Judge Henson) Had you gone into this litigation enough to know that the Subscribers' Actuarial Committee of Chicago were handling it for the companies? A. I knew that as general information.

Q.22. But you don't know anything about the issuance of this check here except that Mr. Henry just asked you to sign it? A. Just as I have stated, yes.

Q.23. Do you know anything further in regard to this Missouri litigation situation that you haven't told us? A. I can say this, that sometime later this entire amount was returned to us. Whom it came from, I don't know.

Q.24. You mean by that, that later you got a dividend from the trustees which was in that amount? A. I can't tell you whether it was a dividend but this entire amount was returned to us.

Q.25. Well, do you know that it was that amount or just a similar amount? You received a check for this amount? A. I received a check for that exact amount.

Q.26. That was in December, 1937, every company got a 5 per cent dividend. A. I don't know what it was for, except I am just stating that this same amount was returned to us, by whom I don't know.

Q.27. You don't know whom it came from? A. No.

Q.28. It may not have come from C. R. Street, Agent?

The Special Master: He just said he didn't know where it came from and he naturally wouldn't except by sheerest accident, because the nature of his duties were such as not to require him to know anything about it at all.

Judge Henson: They brought him up here purporting that he knew something about it.

The Special Master: Well, I know.

Q.29. (By Judge Henson) Who is R. V. Barker? A. Mr. Barker at the present time is the general auditor for the company succeeding—

Q.30. (Interrupting) Is he here in New York? A. Yes.

Q.31. Have you talked to him about this Missouri litigation? A. No.

Mr. Berger: When did Mr. Barker succeed Mr. Henry?

A. Mr. Henry died in March, this March, and the 1st of April Mr. Barker succeeded him.

Q.32. (By Judge Henson) He hadn't been connected with the company prior to that time? A. Yes, he had.

Q.33. In what capacity? A. As Mr. Henry's assistant.

The Special Master: He just stepped up?

A. Yes.

Judge Henson: That is all.

(Witness excused.)

Judge Henson: Defendants' Exhibit 172 is offered in evidence.

(Which said Defendants' Exhibit 172, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

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NEW YORK MAR 25 1936 19[illegible] No. 14646

THE CHASE NATIONAL BANK 1-74

OF THE CITY OF NEW YORK
FIFTH STREET CORNER OF MADISON

PAY TO THE ORDER OF [illegible] $1797 [illegible]

[illegible] 1797 [illegible] DOLLARS

THE TOKIO MARINE & FIRE INSURANCE COMPANY, LTD.

[illegible]
GENERAL AUDITOR

[illegible]
GENERAL AGENT

[illegible]

FOR DEPOSIT
FIRST NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

[illegible] 1936

FRANK B. MARTIN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Frank B. Martin.

Q.2. Where do you reside? A. Plainfield, New Jersey.

Q.3. What is your connection with the Yorkshire Insurance Company group? A. None.

Q.4. Were you connected with them in 1935 and 1936? A. Yes.

Q.5. In what capacity? A. Acting manager, Frank & DuBois were the United States Managers. I am a partner of Frank & DuBois and gave my attention to the operations of the insurance group.

Q.6. When was your connection with these companies terminated? A. March 31, 1937.

Q.7. Is the Yorkshire the parent company? A. Yes.

Q.8. And London and Provincial and Yorkshire are under common management? A. That is right.

The Special Master: Just two in the group?

A. No, Seaboard Fire & Marine.

Q.9. That last, however, was not involved in the Missouri rate litigation. A. Seaboard Fire & Marine was in the state.

Q.10. I see. Who handled the litigation in behalf of your company? I mean who was in charge of directing it, etc., or was the Actuarial Committee? A. The Actuarial Committee.

Q.11. And did you know Charles R. Street? A. Yes.

Q.12. You knew he was chairman of that committee? A. Yes.

Q.13. Did you know he was actively in charge of it himself? A. I did.

Q.14. Very much? A. Very much.

Q.15. So far as you were concerned, he was in complete charge? A. That is right.

Q.16. You understood that during the time in 1935 and 1936? A. That is right.

Q.17. Now, do you know anything about the negotiations for a compromise in the spring of 1935? A. Yes.

Q.18. While the negotiations were pending? A. Yes.

Q.19. From whom did you get that information? A. It would be hard for me to say, general knowledge, I think.

Q.20. What information did you have as to these negotiations? A. Nothing as to the particulars.

Q.21. You simply knew that a settlement was being negotiated? A. Yes.

Q.22. Were you called upon for any funds in the year 1935 in connection with this compromise? A. Not that I recall.

Q.23. Did you attend any meetings in connection with it? A. No.

Q.24. Did you ever come here to this office in connection with the compromise in any way? A. No.

Q.25. Are you a member of this Executives' Association or were you then? A. I was.

Q.26. Was there any information passed out by the Executives' Association at about the time this compromise was being negotiated? A. I recall none from this associati[illegible]n.

Q.27. I didn't get it. A. No.

Q.28. Did you know anything about a fund being raised about the time of the compromise and in connection with it? A. In 1935 or 1936?

Q.29. In 1935. A. No. I don't recall anything about it.

Q.30. You afterwards heard that $100,000.00 was raised in the spring of 1935 in connection with this compromise, didn't you? You heard of that? A. Well, I can't say that I did.

Q.31. All right. A. My two years disassociation in insurance affairs hasn't helped my memory any because I have just forgotten all insurance company operations in that time.

Q.32. After the compromise was effected you knew that a federal court order was made carrying out substantially the terms of that compromise? A. Yes.

Q.33. And you received a circular letter from the Actuarial Committee giving you the terms of it and the provisions of it? A. Undoubtedly.

Q.34. That, I believe, was in the early part of 1936? A. I would say yes.

Q.35. Shortly after that compromise you received from the custodian some 45 per cent to 50 per cent of the impounded funds, did you not? A. Yes.

Q.36. And you knew that a 30 per cent fund had been set up in the hands of trustees for the purpose of payment of expenses? A. I presume that was included in the report from the Actuarial Committee, and if it was, I knew it because I read the report.

Q.37. You knew, of course, that 20 per cent went to the policyholders? A. Yes.

Q.38. Then did you receive a check for 11 per cent from the trustees? A. Yes.

Q.39. And that was out of the 30 per cent fund for which they were nominated the trustees? A. I don't know; I don't recall.

Q.40. But you did receive a check? A. I remember receiving 11 per cent.

Q.41. Do you recall it was from Street and Folonie, Trustees? A. I don't recall whom it was from.

Q.42. Whom did you receive the check from? A. Mr. Haid's assistant.

Q.43. Mr. Erskine? A. Mr. Erskine

Q.44. Where were you when you received it? A. In our office at 90 John Street.

Q.45. Did Mr. Erskine make a personal call on you? A. Yes.

Q.46. Did he deliver it to you in person? A. Yes, sir.

Q.47. And at the time he delivered the check to you, what did he tell you? A. Well, he told me very little, as I recall it.

Q.48. Well, what was it? A. That it was merely money from the impounded funds of the Missouri case, and at the same time he asked for a check for 5 per cent of that impounded fund.

Q.49. For what purpose? A. As I recall it, expenses.

Q.50. What expenses? A. I don't know.

Q.51. Did you ask him? A. I think I did.

Q.52. What did he tell you? A. I don't think he did.

Q.53. He said he didn't know? A. I think so.

Q.54. And you gave him the check? A. Yes.

Q.55. He had told you at the time you gave him the check upon your inquiry that he didn't know what it was for? A. That is my recollection.

Q.56. And did you then make a requisition for the check? A. Yes.

Q.57. Is it your custom and practice to pay out money not knowing the purpose for which it is to be used? A. Yes, when you are paying it to a committee or an individual in whom you have confidence.

(Photostatic copy of check and check requisition, handed to the reporter, was marked for identification as "Defendants' Exhibits 173 and 174, EFM.")

Q.58. I hand you Defendants' Exhibit 173 and ask you if that is the requisition which you caused to be made at the time you issued the check? A. Yes.

Q.59. All right. Mr. Erskine had told you that he didn't know what it was for? A. That is my recollection.

Q.60. Then you marked it down here "Legal Fees in connection with Missouri impounded premiums," is that right? A. Yes.

Q.61. If you didn't know what it was for, why did you put it "legal fees"? A. Mr. Erskine didn't know what it was for except that it was to go to Charles Street, and I assumed it was for legal fees.

Q.62. Who assumed that, you or he? A. I may have.

Q.63. You did? A. I may have.

Q.64. But you simply assumed it because Mr. Erskine didn't know? A. I think that is right.

Q.65. That is your recollection today? A. That is my recollection.

Q.66. And you put it "attorneys' fees"? A. Yes.

(Which said Defendants' Exhibit 173, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

COMPANY Yorkshire Ins. Co. Ltd.

REQUISITION FOR CHECK

$ 2455.42

DATE 3/24/36

PAY TO THE ORDER OF C. R. Street, agent

THE SUM OF Twenty Four Hundred Fifty [illegible] DOLLARS

IN PAYMENT OF Legal Fees in connection with [illegible]

REQ. MADE BY J. Nicholas

APPROVED BY J. V.

PAID MAR 1936 CASHR. N.Y.

FORM 1093 6M 11-34 U. S. 20.071

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D 173

Q.67. Then I hand you Defendants' Exhibit 174, which I now introduce in evidence. Is that the check which was issued to C. R. Street, Agent? A. Yes, sir.

Q.68. For $2,455.62? A. Yes.

Q.69. That is 5 per cent of your impounded premiums? A. Yes.

Q.70. And you delivered that to Mr. Erskine in person? A. That is right.

Q.71. Did he tell you that there was immediate need for the check? A. I think so. He wanted it that day.

Q.72. Wanted it that day? A. Yes.

Q.73. Did he tell you why it was urgent that he have it? A. Not that I recall.

Q.74. Well, if there had not been an urgent request for it immediately, would you in ordinary course of business have found out what it was for before issuing it? A. Not necessarily.

Q.75. Well, I mean ordinarily? A. No. Any request that came from Charles Street would have been drawn.

Q.76. For any purpose? A. For any purpose.

Q.77. Did Mr. Erskine tell you that there would be an accounting for the check at a later date? A. I don't recall.

Q.78. Well, was there ever an accounting for it? A. I don't know because after my services terminated at the end of that March, what the final thing was, I don't know.

(Which said Defendants' Exhibit 174, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

FRANK & DU BOIS
U. S. MANAGERS
80 JOHN STREET

Guaranty Trust Company of New York

New York, N.Y. MAR 24 1936 19 No 82894

Pay to the order of W. R. Street, Agent $ 2455.62

Twenty four hundred fifty five 62/100 Dollars

THE YORKSHIRE INSURANCE COMPANY, LTD

In Payment of

C. C. Schmidt
COUNTER TELLER'S CASHIER'S

H. F. Ellen
BRANCH MANAGER SUPERINTENDENT MANAGER Indorse

ENDORSEMENT OF THIS CHECK CONSTITUTES A RECEIPT IN FULL FOR ITEMS SHOWN ON FACE THEREOF

W. R. Street Agent

FOR DEPOSIT WITH CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

MAR 31 1936

Payment represented by this check is the aggregate participation of

The Yorkshire Insurance Company, Ltd.	1972.93
The London & Provincial M. & G. Insurance Company, Ltd.	482.69

Q.79. Your services terminated when? A. March 31, 1937.

Q.80. Well, from the date of the issuance of the check, March 24, 1936, down to the termination of your employment with the company in March of 1937, did you make any inquiry as to what the check had been issued for? A. No.

Q.80½. You did get an acknowledgment from C. R. Street, Agent, dated March 31, 1936, which recited, "I acknowledge receipt of your check for $2,455.62, account Missouri litigation expense"? A. Yes.

Q.81. Is that the extent of your knowledge concerning this transaction? A. Why, it is hard to say that it includes all of the details that I may know of.

Q.82. Well, can you think of any now? A. I can't think of any.

Q.83. Did you have any knowledge other than what you have stated concerning this check? A. None whatever.

Q.84. Did Mr. Erskine ever call personally at your office about any other matter? A. Oh, yes.

Q.85. In connection with the Missouri rate litigation? A. No.

Q.86. Sir? A. No.

Q.87. You understood that his personal call was actuated by reason of the necessity for the check, the urgency? A. The urgent request from Mr. Street that this company deliver the check to us and get a 5 per cent check.

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.88. Did your company or you or any other officer of it authorize the payment to Mr. Street of any money for the purpose or know that Mr. Street used any money for the purpose of paying any public official or any other person to bring about this compromise settlement? A. No.

Mr. Bullitt: That is all.

The Special Master: Just a minute, I want to ask you, of course, fire insurance companies are regulated companies?

A. Yes.

The Special Master: And they are subject to be examined by the auditors of every Superintendent of Insurance of every state where they do business?

A. Right.

The Special Master: And every last one of them has a right to ask you what an item is for?

A. Yes.

The Special Master: Now, if any one of them asked you what that item was for, what did you expect to tell them?

A. Expected to tell it was for litigation expenses.

The Special Master: You didn't know that?

A. We so marked it on our voucher, on our requisition.

The Special Master: I know you marked it, but you didn't know that?

A. We assumed it was.

The Special Master: If they had asked you for the supporting evidence, you wouldn't have had it?

A. No, sir.

The Special Master: If they asked you what you knew about it, you would have said, "Nothing"?

A. Yes.

The Special Master: But it didn't occur to you you might get yourself embarrassed by having an entry there that any insurance auditor in the United States could ask you about and you wouldn't be able to explain it?

A. That is right.

The Special Master: Of course, you know now that is a fact, don't you?

A. I do.

The Special Master: But you didn't think anything about it at the time?

A. No.

The Special Master: All right.

XQ.89. (By Mr. Bullitt) Well, you knew the litigation existed, didn't you? A. Yes.

XQ.90. And you got back in cash before you paid out this $2,455.00 to Mr. Street, approximately $30,000.00, hadn't you? A. I think it must have been about that amount, yes.

XQ.91. And getting this $30,000.00 you paid out to Mr. Street $2,455.00, something less than 10 per cent? A. Yes.

XQ.92. And you put it on the books as legal expenses or legal fees? A. Yes.

Mr. Bullitt: That is all.

The Special Master: Ordinarily all of your outgoing items are supported by some evidence to indicate what the transaction is?

A. Yes.

The Special Master: Whether you are dealing with your agents or whether you are dealing with somebody else?

A. That is true.

The Special Master: And if any examiner representing any Superintendent of Insurance asked you what it is, why, you can usually refer to the transaction and tell him exactly what it is?

A. That is true.

The Special Master: But you didn't happen to know it?

A. Other than what we assumed.

XQ.93. (By Mr. Bullitt) Didn't you have a supporting document from Mr. Street? A. Missouri litigation.

XQ.94. That was from the man that you say was handling the matter generally? A. Right.

XQ.95. From year to year you had been paying for premium on your injunction bond in that very suit, hadn't you? A. Yes.

XQ.96. One of the expenses of litigation? A. Yes.

The Special Master: Did they pay it individually or was it paid through the assessment?

Mr. Berger: Paid direct by the companies.

Mr. Bullitt: That is all.

Re-Direct Examination by Senator Hollingsworth.

RDQ.97. How did you issue your checks for the injunction bond? A. I don't recall how they were issued.

RDQ.98. Have you any record in your office where you can find that? A. My office records are no longer accessible to me.

Mr. Berger: I am not sure it wasn't the Great American signed the bonds.

(Witness excused.)

T. J. IRVINE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. State your name. A. T. J. Irvine.

Q.2. With what insurance companies are you connected? A. Phoenix Assurance Company of London and the Imperial, Columbia, United Firemen's and Union Marine & General.

Q.3. That is the Phoenix Assurance, Ltd., group? A. Correct.

Q.4. I don't believe you named Columbia Insurance Company, did you? A. Yes, Imperial, Columbia, United Firemen's, also the Marine & General, but that company is not in this litigation.

Q.5. Now, the parent company or the main company is the Phoenix Assurance, Ltd.? A. Yes, sir.

Q.6. What position did you say you had? A. I am United States Manager of the Phoenix and president of the other three companies.

Q.7. And was that your situation in the years 1935 and 1936? A. Commencing with May 1, 1935.

Q.8. Did you have any connection with the companies prior to May 1, 1935? A. Yes, I was secretary for our group.

Q.9. You are aware of the fact that there was a Missouri rate litigation that was pending? A. Yes, sir.

Q.10. And that your companies had impounded premiums? A. Yes.

Q.11. These suits were pending in the United States District Court in Missouri? A. Yes.

Q.12. At Jefferson City, Missouri. Did you get information about the settlement of the litigation? A. Yes, I believe that came from the Actuarial Committee. That is my recollection.

Q.13. With reference to the time the agreement was signed, which was May 18, 1935, how soon after that do you think it was that you had that information? A. Oh, I couldn't say.

Q.14. Well, the court decree ordering the distribution was made February 1, 1936, some months afterwards. With reference to that date when do you think you got the information? A. I couldn't say. I have no recollection, it is so much a part of the routine of it running along so long, it was almost routine.

Q.15. From whom did you get the information, Mr. Irvine? A. From the treasurer of our group.

Q.16. The treasurer of your group? A. Yes, sir.

Q.17. Who is that? A. J. F. Cunningham.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 175, 176, 177 and 178, EFM.")

Q.18. Mr. Irvine, I show you the Defendants' Exhibit 175, which I now introduce in evidence, that is this document, exclusive of this right here in the corner (indicating). A. Yes.

Q.19. State in a general way what that is. A. That is a photostatic copy of the check of the Phoenix Assurance Company.

Q.20. Made on its purported date, March 13, 1936? A. That is correct.

Judge Henson: I now introduce Exhibit 175.

Q.21. I show you Exhibit 176 which I now introduce, and I will ask you what that purports to be, this in the corner here (indicating). A. This item purports to be the proportion of this payment that was borne by each company of the group.

Q.22. That is the breakdown of the amount of this check of the companies? A. That is correct. We pool our income and expenses.

(Which said Defendants' Exhibits 175 and 176, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

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No 410144 New York, [illegible] 19[illegible]

PHOENIX ASSURANCE CO. LTD. OF LONDON

UNITED KINGDOM BRANCH

PAY TO THE ORDER OF [illegible] $5226.18

IRVING TRUST COMPANY
WALL STREET OFFICE
ONE WALL STREET
NEW YORK
1-67

[illegible] ASST. GENERAL AGENT AGENCY SECRETARY GENERAL AGENT

RECEIVED PAYMENT
THROUGH NEW YORK CLEARING HOUSE
PRIOR ENDORSEMENTS GUARANTEED
MAR 25 1936
CHASE NATIONAL BANK
NEW YORK
No. 74

PAID THROUGH THE LONG ISLAND CLEARING HOUSE
MAR 24 1936

FOR DEPOSIT WITH
FIRST NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

Phoenix Assurance Co., Ltd.	$3,865.20
Imperial Assurance Co.	1,063.50
Columbia Insurance Co.	190.10
United Firemen's Ins. Co.	107.38
	$5,226.18

Q.23. Now, I show you Defendants' Exhibit 177, which I now introduce in evidence, which I will ask you what it is. A. That is a memorandum in my own handwriting, in effect, instructions to the treasurer to issue a check to which it refers and to which we referred.

(Which said Defendants' Exhibit 177, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Px — $8503.43
Col — 418.71
Imp — 7339.71
G.J. — 736.75
$11,497.60

$11.497.60
11% of Total
Impoundings up
to May 1/35

Grand Total $104.523.60

One cheque for 5% or $5226.18
payable either C.R. Street Agent
or as preferred to R. J. Dolonie

Cheque $5226.18
to C.R. Street Agent

J.D. Enairs

Q.24. Now, I show you Defendants' Exhibit 178, which I now introduce in evidence, and will ask you if that is a carbon copy of Mr. Cunningham's letter to Mr. Erskine? A. Yes, I can identify it by Mr. Cunningham's initials, which I know.

(Which said Defendants' Exhibit 178, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

PHŒNIX

COPY

March 23, 1936

J. D. Erskine, Esq., Secretary,
Insurance Executives Association,
116 John Street
New York City.

Dear Mr. Erskine:

Following your visit today with Mr. Irvine, I have pleasure to enclose our check payable to C. R. Street, Agent, in the amount of $5,226.18, covering 5% of the amount impounded by our Group of Companies in the Missouri Rate Case, to May 1, 1935.

At the same time permit me to acknowledge receipt of checks to the following Companies:-

Phoenix Assurance Company, Ltd.	$8,503.43
Imperial Assurance Company	2,339.71
Columbia Insurance Company	418.21
United Firemen's Insurance Co.	236.25
	$11,497.60

representing 11% of the total amount of impounding by these Companies with the Federal Court Custodian to May 1, 1935.

Yours very truly,

JFC

Treasurer.

Enclosure.

JFC:DAR

Q.25. Now, state what you know about the issuance of this check, 175, for $5,226.18. A. Well, that was the result of the visit I received from Mr. Erskine, who, as I recall, brought a check, or more than one check, and asked for a check in return for a certain sum. I don't recall it offhand.

Q.26. Well, would an examination of the Exhibit 177 refresh your memory? A. Yes, this does.

Q.27. If I understood you, Mr. Erskine came to your office? A. That is correct.

Q.28. And I suppose on the date this check bears, May 13, 1936? A. Yes, I should think.

Mr. Bullitt: March, isn't it?

Judge Henson: March, thank you very much.

Q.29. I will ask you if it isn't a fact that he brought with him checks representing 11 per cent of the impoundments, these checks were from the trustees? A. Yes, I think that is correct.

Q.30. On that same visit then he asks you for a check for 5 per cent of all of your impoundments payable to Mr. C. R. Street, Agent? A. Well, as I recall, he didn't say to whom the check would be made payable, either one of two, Mr. Street or Mr. Folonie.

Q.31. That is correct. A. And I asked him to whom the majority of the companies were making their checks payable, and he said, "Mr. Street."

Q.32. According to this memoranda, he gave you the choice of the two men? A. Yes.

Q.33. And does this memoranda reflect that was made at the time he was there? A. Yes, sir.

Q.34. This name down there is— A. (Interrupting) That is written by Mr. Cunningham, the treasurer, and I don't know just why.

Q.35. That name is J. D. Erskine? A. Yes.

Q.36. This was made while it was fresh in your memory? A. Well, he made it while he waited in my office.

Q.37. What did he tell you the check was for that he was asking you for? A. I don't remember that.

Q.38. You don't recall what it was for, but you were willing to give it to him just the same? A. Yes.

Q.39. Your memoranda doesn't say what it is for? A. No.

(Photostatic copies of ledger pages, handed to the reporter, were marked for identification as "Defendants' Exhibits 179 and 180, EFM.")

Q.40. I show you Defendants' Exhibits 179 and 180, which I now offer in evidence. What are these? A. Well, they would appear to me to be a photostat of some pages taken from a cash book.

Q.41. Showing disbursements? A. Showing disbursements, yes.

(Which said Defendants' Exhibits 179 and 180, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

Defendants' Exhibit No. 179 and Exhibit No. 180 are pages from the cash book of PHOENIX ASSURANCE COMPANY, LTD., for the month of March, 1936, which show entry, among others, of check No. 410144, payable to C. R. Street, Agent, charged to Missouri Imp. Adj. Acct., amount $5,226.18.

Q.42. Referring to Exhibit 180, do you find in here the check that you are talking about, showing its being paid out? A. It would appear to be, I am not certain.

Q.43. Now, will you read that memoranda there? A. It looks like "Missouri impounding adjustment account."

Q.44. The "imp" is impounding, and "adj," adjusting? A. I should think that is right.

Q.45. Is there anything in any of these exhibits, including the check itself and including the memorandum that you made and including Mr. Cunningham's letter to Mr. Erskine transmitting the check and acknowledging receipt of the 11 per cent check, is there anything in that, in all those exhibits, 175 to 180, inclusive, that shows that that was for expenses, or legal expenses? If so, show us where it is.

Mr. Bullitt: Did you put this in?

Judge Henson: Yes, sir, I put in everything.

Mr. Bullitt: That has the word "expenses" on it. You overlooked it.

Judge Henson: Where is it?

Mr. Bullitt: It says, "account expenses."

Judge Henson: Maybe I didn't introduce that last one.

Mr. Bullitt: I thought you did. That is the reason I want to be sure it has the word "expenses" on it.

Judge Henson: Well, there is a little short one that I missed. Let's have this one marked.

(Photostatic copy of ledger page, handed to the reporter, was marked for identification as "Defendants' Exhibit 181, EFM.")

Q.46. I show you Defendants' Exhibit 181, which I now introduce in evidence. What does that show the amount of this check to have been for? A. Well, this seems to be—

Q.47. "Account of expenses"? A. Yes, photostat of ledger of an account of the Missouri impounded premium adjustment account, and the entry refers to the payment of an expense item to Mr. C. R. Street, Agent.

Q.48. To adjust account? A. To adjust account.

(Which said Defendants' Exhibit 181, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Defendants' Exhibit No. 181 is a page from the General Ledger of PHOENIX ASSURANCE COMPANY, LTD., account "Missouri Impounded Premium Adj. Acc't (Legal—Other than Claim), which shows an entry March 31, 1936, "C. R. Street agent a/c Expenses $5,226.18."

Q.49. Now, that is the only place where the term "expenses" is used. Look through it. There is where the exhibits begin, there (indicating). No, apart from that ledger sheet there doesn't seem to be any reference to the expense.

Q.50. How can you account for the fact when you made a memorandum of his visit and the purpose of it, that you didn't put down there that this check was for expenses? A. I can't say, apart from the fact that as I mentioned before, this Missouri litigation has been so long with us we had come to regard it as almost part of our routine.

Q.51. I will ask you if you made this entry on Exhibit 181; that is the top here where the expenses are. A. Did I make it personally?

Q.52. Yes. A. No, sir.

Q.53. Did you direct anyone to make it? A. No.

Q.54. Mr. Cunningham's letter transmitting the check, it doesn't refer to it as an expense check, does it? A. No.

Q.55. How did the term "expenses to adjust account" in Exhibit 181 get on there, if you didn't direct it? Who did? A. Well, I fancy Mr. Cunningham, our treas-

urer, may have directed that on the basis that any outgo in connection with this rate litigation was treated as expenses.

Q.56. You said Mr. Erskine couldn't tell you what the check was for, if I understood you? A. Well, I wouldn't say that. I don't recall asking him what it was for.

Q.57. Then you wrote a check for more than $5,000.00 of your companies' funds without knowing what it was for? A. Yes, because it was, I would say, a lesser amount than that represented by the checks he delivered.

Q.58. The checks that you received were checks from the trustees? A. Well, I don't know whom they were from, but I know—I recall they were payable either to the Phoenix or all companies of our group.

Q.59. What did you understand and know at that time as to how the Missouri rate case was settled, that is, the percentages? Wasn't it 20 per cent to be distributed to the policyholders, 50 per cent distributed to the insurance companies, and 30 per cent to be held for expenses? A. That was my understanding, yes.

Q.60. Didn't you know that the companies got 50 per cent? A. Yes.

Q.61. And you got this check for 11 per cent when you were called on for this 5 per cent? A. Yes.

Q.62. You knew the 11 per cent was money not needed in that trustees' account for expenses, didn't you? A. Well, I must have assumed it.

Q.63. And then why would you pay out $5,000.00 here for expenses of which you knew nothing about? A. Well, I can't say why, but my assumption would be that there might be some odd expenses that had to be cleared up.

Q.64. Well, did you ask anybody if there were any odd expenses to be cleared? A. No.

Q.65. You didn't phone to Mr. Haid to find out? A. No.

Q.66. You knew Mr. Erskine was from his office? A. Yes.

Q.67. Did you contact or write Mr. Street to find out? A. No, I didn't.

Q.68. At this visit you are talking about with Mr. Erskine, was there anyone else present? A. No.

Q.69. Just the two of you? A. Just the two of us.

Q.70. Do you know whether he ever talked to your president or anyone else about it? A. No, sir.

Q.71. After he presented this matter to you, how did you get the check prepared and signed? A. My recollection is that so that we would have a record or some sort of a voucher that I asked Mr. Erskine how this amount was made up, and then as I recall it, I personally took that memorandum of mine into the treasurer. Now, I don't remember whether Mr. Erskine waited for the check or whether we mailed it.

Q.72. Evidently by the copy of Mr. Cunningham's letter it was mailed after his visit. A. Well, I can't say as to that.

Q.73. Well, there is the copy of the letter. A. Well, if this was the date of my memorandum, and I can't say that it is, because my memorandum is not dated.

Q.74. I believe I read that March 13th. That is March 23rd, the date of the check, isn't it? A. Yes, and I am not certain.

Q.75. This letter is March 23rd which Mr. Cunningham wrote to Mr. Erskine? A. I am not certain whether Mr. Erskine waited in my office for the check drawn with this letter.

Q.76. That is to say, you don't know whether he took this letter, 178, with the check and carried them both back or whether this was mailed back? A. I can't say as to that.

Q.77. But apparently the letter was written the same day the check was written? A. Yes, sir.

Q.78. Who was conducting the litigation out there in Missouri for your companies? A. Well, we relied upon the Actuarial Committee.

Q.79. Who was chairman of that committee? A. Mr. Street.

Q.80. Did you know Mr. Street? A. He was only a name to me. I didn't know him.

Q.81. You knew his reputation? A. I knew his reputation.

Q.82. Did that have anything to do with the fact that you made the check to him? A. No.

Q.83. I believe you say you had the choice of Street or Folonie and you made it to Street because Mr. Erskine said the most of them were doing that? A. That is correct.

Judge Henson: I believe that is all.

Cross Examination by Mr. Bullitt.

XQ.84. How much money of your company was tied up in the impounded funds involved in this compromise? A. Well, reading this memorandum I would say $114,523.60 as of May 1, 1935.

XQ.85. Isn't that the amount that was involved in the settlement? A. I would say so.

XQ.86. How much money did you get back out of that $114,000.00 of impounded funds in February and March, 1936? A. Well, I would say 50 per cent, which would be $52,261.80.

XQ.87. Then did you get 11 per cent more? A. Yes.

The Special Master: You got 61 per cent altogether there in those two, didn't you?

Mr. Bullitt: That is right, that amounts to how much?

A. 11 per cent is supposed to be represented by this check or checks that were delivered by Mr. Erskine.

Judge Henson: That was $11,497.60.

A. The two together totaling $63,759.40.

XQ.88. (By Mr. Bullitt) That is the amount that you got back in cash, wasn't it? A. Yes, sir.

XQ.89. And out of that you paid back to Mr. Street $5,226.00, didn't you? A. Yes, sir.

XQ.90. And when you paid it you were told you could pay it either to Mr. Street or to Mr. Folonie? A. Yes, sir.

XQ.91. And Mr. Folonie was your lawyer, wasn't he, in this case? A. Yes, sir.

XQ.92. And Mr. Street, you say, was the chairman of the committee that you understood was conducting the litigation in Missouri for you? A. Yes, sir.

XQ.93. Didn't you also understand that in the compromise agreement there was 30 per cent to be used in paying the expenses of the litigation? A. Yes, sir.

XQ.94. And this $5,226.00 that you paid to Mr. Street came out of that 30 per cent, didn't it? A. Presumably, yes.

XQ.95. You got 11 per cent back out of the 30, didn't you? A. Yes.

XQ.96. And you paid back out of that 11 per cent, $5,226.00 to Mr. Street, isn't that true? A. Yes.

XQ.97. So that this $5,226.00 that you paid to Mr. Street came right out of the 30 per cent that was set aside for expenses, didn't it? A. Yes, sir.

XQ.98. Did you or your company or any official of your company, so far as you know, ever authorize Mr. Street to pay any money to any public official to bribe anybody to influence them to bring about this settlement? A. Absolutely not.

XQ.99. Did you pay this $5,226.00 to Mr. Street under the impression or under the belief that it was in some way necessary in order for you to get the refund of $63,000.00 that you got? A. No. While I didn't ask, I don't recall asking, I thought that there were certain odd items of expense which had to be cleared up and this payment—

XQ.100. (Interrupting) Did you know that 30 per cent of your impounded funds were set aside to pay expenses? A Yes, sir.

XQ.101. Did you know that the 11 per cent that you were getting back that day was a part of that 30 per cent? A. I assumed it. I don't recall asking whether that was the case.

Mr. Bullitt: All right, that is all.

Re-Direct Examination by Judge Henson.

RDQ.102. Now, Mr. Irvine, do a little figuring for me, will you? 11 per cent of that 30 per cent came out, 11 per cent of your total impoundments came out of the 30 per cent of the total impoundments. That left 19 per cent for litigation, didn't it, of the total impoundments? A. Yes.

RDQ.103. What sum would that be of your $114,000.00? Wouldn't that be about $20,000.00? I don't care to take a lot of time. A. Yes, approximately.

The Special Master: Roughly, yes.

RDQ.104. (By Judge Henson) So they had there available for the payment of expenses already from your companies, $20,000.00?

Mr. Berger: I object to the assumption of that, assuming a fact that is not in existence and not within the knowledge of this witness of what the trustees might have had available. In March the trust account hadn't been created and the record of this court by the report of the trustees shows a vast amount of that money had already been paid out.

The Special Master: I know, but he didn't know any of it. He is only talking about what he had available.

Mr. Bullitt: He asked what he knew was available. They did pay 5 per cent or more back.

RDQ.105. (By Judge Henson) Either it had been paid back or was there to be paid back, would be 19 per cent or about $20,000.00? A. Yes, sir.

RDQ.106. Of your money? A. Yes, sir.

RDQ.107. You knew that the same thing was true with all of the other companies involved in the litigation? A. I assumed it.

RDQ.108. Then in addition to that you gave him $5,000.00 for some other expenses which you don't know anything about? A. Yes, sir.

Judge Henson: All right, that is all.

The Special Master: I want to ask you something. Did you know that the 30 per cent that had been set aside for the payment of expenses was in the hands of Street and Folonie as trustees?

A. No.

The Special Master: Do you know who had it?

A. No.

The Special Master: Did you pay any attention to whom you got your check from for the 11 per cent?

A. No, I didn't. I don't even remember. I don't recall looking at it. All I saw was the amount and we were asked for a check for a lesser amount.

The Special Master: You didn't know where that money was coming from?

A. No, sir.

The Special Master: The 11 per cent came in and the 5 per cent went out and you didn't look to see whom you got the 11 per cent from and you didn't try to find out why the 5 per cent went out?

A. No.

The Special Master: You just did it, didn't ask any questions?

A. None at all.

RDQ.109. (By Judge Henson) Have you since tried to make any inquiry as to where this $5,000.00 check went? A. No, I haven't.

RDQ.110. Has Mr. Street ever given you any accounting of that? A. No.

RDQ.111. Nor anybody else? A. Not to my knowledge.

Judge Henson: That is all.

The Special Master: Now that you look back at it, do you wonder why you treated the whole thing so nonchalantly?

A. Yes, and no. It is perhaps a peculiarity of our business that we frequently have cases in litigation or loss cases where a number of companies are interested, and usually one company is active in the conduct of the case.

The Special Master: The one that has the biggest policy?

A. Usually, and we rely upon them. That, perhaps, seems funny.

The Special Master: But according to your testimony you didn't even take the trouble to find out where you got your money that was paid to you?

A. No, because I knew that the whole affair was being handled by the Actuarial Committee and almost entirely by Mr. Street as chairman of that committee.

The Special Master: How did you know, even know that that was part of your impounded premiums?

A. I really didn't know.

The Special Master: Nobody told you so and you didn't look to see who signed the check?

A. I didn't really know, I must confess.

The Special Master: You didn't even know that was part of the impounded premium?

A. No.

The Special Master: All you knew you were getting the money and you were willing to take the contribution and that was really about all there was to it?

A. That is, any money that came in connection with the Missouri litigation looked good to me.

The Special Master: You weren't even sure it came in from the Missouri litigation, were you?

A. I assumed that it did.

The Special Master: You didn't look to see, nobody said so?

A. No.

The Special Master: You didn't know who signed the check nor why, except you were getting the money?

A. No, I don't remember even looking at the check, except the amount, if there was one check or if there were four checks. All I recall is that the amount we received in was greater than the amount we were asked to pay out.

The Special Master: As to whether or not you were paying it back to the same people that were paying it to you, you didn't look to see?

A. No.

The Special Master: Nor had no curiosity?

A. No.

The Special Master: All right.

RDQ.112. (By Judge Henson) You are not aware of any other records in your office than those you have examined here that relate to this payment of 5 per cent for the $5,200.00 check? A. No, sir.

RDQ.113. You don't know of anybody else in your office that knows any more about it than what you have told here? A. No.

RDQ.114. Even Mr. Cunningham doesn't know that much? A. I wouldn't say he would know any more than I do because—

RDQ.115. (Interrupting) Whatever information he got, he got from you, didn't he? A. No, usually it was in the reverse. Any information that would come over my desk I would pass on to Mr. Cunningham and he would check into it and if there was anything that he thought I should know, he would so advise me.

RDQ.116. If Mr. Erskine saw Mr. Cunningham at all, you don't know it, do you? A. No.

Judge Henson: That is all.

The Special Master: The very, very little attention that you gave to the matter, can that be accounted for on the theory you were following the leader; you were assuming somebody else was checking up and somebody else was watching it to see that everything was straight and all right.

A. Yes, that is really so.

The Special Master: Is that really the explanation?

A. That is.

The Special Master: If you had had a big loss and there had been a dozen, fifteen or twenty policies out on it, but you would have had the much bigger policy than anybody else, you would probably have taken charge of the whole thing, wouldn't you?

A. I surely would have.

The Special Master: And then you would have treated everybody prorata and they would kind of looked at you?

A. Yes.

The Special Master: But if you had had a little bit of a policy and some other had had a great big loss on fire, the chances are you would have followed the leader and assumed they would have made as good a settlement as possible?

A. Yes.

The Special Master: Does that explain it or not?

A. Yes, that explains it.

The Special Master: It calls for explanation. You can see that for yourself, can't you?

A. Our practice in matters of this kind is, "What is so and so doing?"

The Special Master: I understand, but it does call for some kind of an explanation. If an executive just says, "I got the money and I don't know where, and I paid it out and I don't know," there must be some explanation for it. It can't just stand that way. You can see that, can't you?

A. Well, yes, as an outsider looking in I can see that.

The Special Master: You are the insider and it is up to you to furnish the light.

A. Well, as I have said, it is the practice in the business. Very seldom that my company or any other company is interested alone in litigation.

The Special Master: Which affects the companies as a whole or in a big loss?

A. I mean we are not solely interested. It is very seldom such a thing occurs. There are always a number of companies interested.

The Special Master: I know, but there always has to be somebody to take the responsibility to see that the thing doesn't go haywire?

A. Right.

The Special Master: Everybody can't rely upon somebody else?

A. That is true. Now, if it so happened that my company had the principal interest, the largest amount at stake, we would probably carry on the case.

The Special Master: You would either be checking it very closely or you would be satisfied that somebody else was checking it closely, but that you would be content to rely on their judgment, one of the two?

A. Yes, but the chances are we would be doing it ourselves.

The Special Master: In this particular case you felt like you were following the leader and somebody else was looking after it?

A. Yes, sir, because I always felt that our interest as compared with some of the other companies was quite small.

The Special Master: All right.

Judge Henson: That is all, I believe.

(Witness excused.)

The Special Master: We will adjourn until nine o'clock tomorrow morning.

Whereupon, the further taking of testimony in said case was adjourned until nine o'clock a. m. of Thursday, August 3, 1939.

MORNING SESSION, THURSDAY, AUGUST 3, 1939.

Pursuant to adjournment as aforesaid, at nine o'clock a. m. of said Thursday, August 3, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

R. V. A. BAKER, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. Just state your name, please. A. R. V. A. Baker.

Q.2. With what company are you connected? A. Tokio Marine and Fire.

Q.3. What is your official position with that company? A. I am general auditor now.

Q.4. What were you in 1935 and 1936? A. I was supervisor of accounts.

The Special Master: Does the Tokio have any affiliated companies?

A. Yes.

Q.5. (By Mr. Holman) Not involved in the federal case? A. No, they are not.

The Special Master: All right.

Q.6. (By Mr. Holman) Were you familiar with the Missouri rate litigation pending in the federal court? A. As far as the accounting records are concerned.

Q.7. I will show you the Defendants' Exhibit 172 which purports to be a check from your company to C. R. Street, agent, for $1,797.86. Do you know how that happened to be issued? A. No, I am not familiar with the circumstances that led up to the drawing of that check.

Q.8. Do you know anything about this litigation and the settlement of it and the collecting of money thereafter except what is shown in this file that we have

here? I will show you the file. A. You had better let me look that over. Well, I guess the whole story is here, as far as I know.

Q.9. Did you ever talk with Mr. Henry about this matter, about the payment of this money to C. R. Street, agent, or about the settlement of the case or anything concerning this rate litigation in Missouri? A. Of course, the matter was frequently talked about in the office.

Q.10. What did Mr. Henry tell you about it? A. The only thing I can recall in regard to that check there is that he instructed us to charge it to the Missouri impounded premium account on the books.

Q.11. Did he tell you who had requested the issuance of the check? A. No.

Q.12. Do you know what the money was being paid for? A. No.

Q.13. Did you know the case was settled at the time it was settled or about that time? A. Just how do you mean that?

Q.14. Did you understand or become advised in May, 1935, or sometime thereabouts that this case had been settled? A. Oh, yes.

Q.15. You heard about that? A. Oh, yes.

Q.16. Were you familiar with the general terms of the settlement? A. Yes.

Q.17. Did you know that thirty percent of the impounded premiums were turned over to trustees for the purpose of paying expenses? A. No.

Q.18. You didn't know that? A. No. My recollection of the settlement is this, the policyholders were to receive twenty percent and the companies the remainder, out of which expenses were to be paid.

Q.19. Did you enter this record of the payment of this check or the issuance of the check on the records of your company? A. With my personal entry?

Q.20. Yes. A. No.

Q.21. Now, as I understand it, Mr. Henry is dead? A. Mr. Henry is dead.

Q.22. I believe the president of your company at that time— A. (Interrupting) That is right, Mr. Kelsey is now dead.

Q.23. Do you know anyone with your company who knows anything about this controversy? A. You mean who might know more about it than I do?

Q.24. That is right. A. No. I don't think anybody does.

Q.25. It was handled largely by these two officers who are now dead? A. Yes.

Q.26. They didn't discuss it with you and impart any information to you that you haven't detailed here? A. No.

Q.27. You have told us all you know about it? A. That is right.

Q.28. You don't know of any other man with your company that knows anything additional? A. No, I do not.

Q.29. Of course, you understand Mr. Kline testified here yesterday? A. Yes, he was here.

Mr. Holman: I believe that is all.

Mr. Bullitt: That is all.

(Witness excused.)

GUSTAVUS REMAK, JR., being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Mr. Remak, what is your connection with the Insurance Company of the State of Pennsylvania? A. I have been president since September 1, 1913.

Q.2. Continuously? A. Yes, sir.

Q.3. Were you the officer of your company who handled the matters of the company in connection with the rate litigation in Missouri? A. You mean the financial transactions relating to it? A. No.

Q.4. You did not? A. I did not.

Q.5. Who handled that litigation for your company? A. Mr. John J. P. Rodgers who is our vice-president and treasurer.

Q.6. Now, there were a large number of companies involved in the committee. What committee or body handled it for the companies? A. The Subscribers Actuarial Bureau Committee.

Q.7. Headed by Mr. Charles R. Street? A. Yes.

Q.8. You know that Mr. Charles R. Street was in active charge of the litigation? A. Oh, yes, absolutely. That part I know considerable about, I mean his reports.

Q.9. Do you know that a compromise of the case was effected in May of 1935? A. Yes, I heard of it indirectly or through their communications to us. I think

we heard everything through letters from the Subscribers Actuarial Bureau.

Q.10. And prior to the actual signing of the compromise settlement did you know anything about the negotiations that were taking place? A. I think I must have heard of it. If I may explain, Mr. Charles R. Street was very prominent in the Western Underwriters, and the reports of the Subscribers Actuarial Committee were generally made at the semi-annual meetings there. They would hold a meeting afterwards. Sometimes I attended those meetings, sometimes I did not.

Q.11. But your knowledge was confined to the public reports that he made at meetings? A. Well, if you are speaking of the last pending case; I knew more about the original case under the Hyde order of 1922 than others.

Q.12. I mean the sixteen and two-thirds. A. No, I only knew it just as we were probably informed directly by the committee.

Q.13. Then, of course, you knew that after a compromise agreement was signed a federal court decree was entered confirming that agreement? A. We heard it.

Q.14. And do you know that after that you received substantially the fifty percent which had been allotted to the companies outright from the custodian? A. I know that from our records.

Q.15. But you have no personal knowledge? A. I have the data from the records.

Q.16. Then do you recall that subsequent to that you received a 11 per cent check from Folonie and Street as trustees? A. Well, the way I heard about that was this: I was sitting in my own office and I walked out and saw Mr. Haid was turning away, and I spoke to Mr. Haid whom I see constantly in the business. I didn't even know what he was there for until afterwards.

The Special Master: Where is your office?

A. 308 Warner Street, Philadelphia, The Insurance Company of the State of Pennsylvania. I didn't even know what he was there for. I just greeted him in a friendly way and after he left Mr. Rodgers told me of the transaction of March 24th, I think the date was when we had received the first.

Q.17. That appears to be correct. A. Wait a minute, here it is, March 24th. Yes, we received $4,182.71, and that check had been issued to Mr. Street, I think as

agent, on that same date for $1,876.68. I guess this $4,128.71 is the 11 per cent and that is the other, and our total impounded premiums had been $41,042.05.

Q.18. My file shows that up to May 1, 1935, they were $37,533.74. A. Yes, that is the basis that we have made the return to the custodian on. We returned to the custodian on June 26, 1939, $30,026.99.

Q.19. Now, did Mr. Haid tell you how he happened to be in Philadelphia on that date? A. No, I didn't even know. I just walked out of my office, I said, "How are you, Mr. Haid," etc., and he was about turning away. I just passed the time of day with him and after he left I guess I asked Mr. Rodgers what Mr. Haid was in here about and he told me.

Q.20. Did Mr. Rodgers tell you? A. Yes, he told me that he received a check from the trustees and that he had delivered a check to Mr. Street's order.

Q.21. Did he tell you how Mr. Haid happened to be down there requesting a check for Mr. Street? A. I probably asked him what it was for and he said he understood that it should be charged, and I think it is so charged in our books, for legal expense. He is here, he can speak for himself.

Q.22. I understand. I am just trying to get your recollection as to the conversation. A. Yes, that is it.

Q.23. Did you know anything about a fund of $100,000.00 being raised in the spring of 1935? A. Never heard of it until I read it in the papers here.

Q.24. That was after the investigation in Kansas City? A. Yes.

Q.25. You never contributed any to that. Is that the extent of your knowledge concerning this settlement and the money paid to Mr. Street in connection with it? A. Yes, that is the extent of my knowledge.

Senator Hollingsworth: I believe that is all.

Cross Examination by Mr. Bullitt.

XQ.26. Did you or your company or any officer of your company ever ask Mr. Street to attend to anything for you in connection with this Missouri litigation? A. Oh, no, absolutely not.

XQ.27. Did you or any officer of your company so far as you know, ever authorize or request Mr. Street to pay or know that he had paid any money to any public official or anybody else to bring about a consent decree settling the Missouri litigation? A. Never heard any-

thing about it until it was in the newspapers. I never had heard of Mr. Pendergast or Mr. McCormack, either of them. I knew Mr. O'Malley in his official position. I never met him either.

Mr. Bullitt: That is all.

The Special Master: How did your suit ever happen to get started? You say you didn't authorize Mr. Street to act for you and yet he was acting. Did he just bring a suit for you without your consent?

A. Oh, no. You are asking my knowledge of Missouri rate litigation. I have been on the Laws Committee and National Board of Fire Underwriters since May, 1921, and we heard of it there shortly after the first Hyde 10 per cent reduction order, and when that original case, of course, was brought up, as a lawyer I took a good deal of interest in it.

The Special Master: I am not interested in the first case. I want to know how—

A. (Interrupting) We were undoubtedly requested—we were told there was a movement to get this order to let us have an increased rate. Then we must have been told—I think the department refused to let us put it into effect. Now, you are talking things that the record must show. I am speaking from recollection.

The Special Master: No, the record does show—

A. (Interrupting) Then it shows we went into the federal court and got an injunction against it restraining—

The Special Master: I know, but how did it happen to get started?

A. Oh, undoubtedly—I had nothing to do with the technical side. I am not up in the technical side of rate making or anything of that sort.

The Special Master: I know, but there is a situation, your company appears as a plaintiff in the federal court, as one—

A. (Interrupting) Sure.

The Special Master (Continuing): —in 137 different injunction suits, and your company was one.

A. Yes.

The Special Master: And the suit was brought in your name?

A. Yes.

The Special Master: Now, as a matter of fact, Mr. Street, according to the evidence, was looking after that?

A. Yes.

The Special Master: And Mr. Folonie was as attorney?

A. Yes.

The Special Master: But you say that you didn't authorize Mr. Street to do anything for you. Now, that—

A. We undoubtedly authorized the Subscribers' Actuarial Committee, which was dealing from Chicago with most of the matters that arose in the territory of the thirteen states.

The Special Master: All right. Then what you meant was that you never told Mr. Street to raise any money, you didn't tell him what to do with it, and you didn't know just what he was going to do with it. That is what you meant, wasn't it?

A. I guess during ten years I saw Mr. Street pretty regularly twice a year at the Western Underwriters meetings. As a matter of fact, even then I never personally discussed it with him, although I got to know him rather well, anything about it. He would make a report, generally at those meetings, of what the status of the then pending litigation was. Otherwise everything was in written communications to us, that so and so has happened, this order has been made and that has been made.

The Special Master: In other words, there were just too many plaintiffs with too many lawsuits for each one to take it upon himself to give individual matters—

A. Oh, it was a group matter. There is no question about it.

By Mr. Bullitt.

XQ.28. Isn't it a fact that this suit was brought in your name by the attorneys, Hicks and Folonie, and that you were notified by the Missouri Inspection Bureau that the suit had been brought to test the sixteen and two-thirds rate case, and that you just accepted that and ratified it by taking the benefits of it as a suit? A. Mr. Bullitt, that sounds to me right. I guess it originally came from the Missouri Inspection Bureau.

XQ.29. And while you didn't authorize the suit in advance to be brought, you ratified it when you found out that it had been brought in your company's name, and you accepted it? A. Oh, undoubtedly.

XQ.30. And that you never, at any time, had any direct communication with Mr. Street, telling him to look after it? A. No.

XQ.31. Now, isn't that true? A. Oh, none whatever, unless as an official of the Subscribers Actuarial Bureau.

The Special Master: You are sure that your company never told anybody or authorized anybody to bring a suit before it was brought?

A. I cannot say whether we were consulted before it was brought or joined when it was stated that a group of companies were going to bring it. I can explain to you —I knew so much about the first case that it seemed perfectly natural we were included in the second one.

The Special Master: All right.

Senator Hollingsworth: That is all.

(Witness excused.)

JOHN J. P. RODGERS, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Mr. Rodgers, where do you live? A. Philadelphia.

Q.2. What is your connection with the Insurance Company of the State of Pennsylvania? A. Vice-president and treasurer.

Q.3. And you were vice-president and treasurer in 1935 and 1936? A. Yes.

Q.4. You have sat here and listened to the testimony of Mr. Remak who just preceded you? A. Yes.

Q.5. You knew about the settlement having been made? A. Yes.

Q.6. Through the report from the Subscribers' Actuarial Bureau, and you got a circular letter in which the details of that settlement were set out? A. Yes.

Q.7. You have been familiar with them, of course, ever since you received that communication? A. Yes.

Q.8. You know that 20 per cent went to the policyholders? A. Yes.

Q.9. 50 per cent outright to the companies? A. Yes.

Q.10. And 30 per cent was allocated for the payment of expenses? A. Well, just what was going to become of the 30 per cent I can't say that I knew at the time.

Q.11. Well, you had the information before you in the letter? A. Yes, I mean I don't recall just the technical position of it. That is what I mean.

Q.12. You knew it was placed in the hands of trustees for the payment of expenses? A. That is what I mean, I knew there was 30 per cent to be dealt with in some way, but whether it was transferred to trustees or not—

Q.13. You didn't skip that part of the communication when you got to it? You read it? A. No, no. What I mean, I just have no recollection. It didn't make any impression on me at the time. I knew there was 30 per cent to be dealt with in some manner, whether we were going to get all of it—

Q.14. Well, your company as of May 1, 1935, had $37,533.00 impounded premiums? A. Yes, up to the first of May.

Q.15. And 30 per cent of that would be some $11,000.00 or $12,000.00? A. Yes.

Q.16. So the 30 per cent was of some concern to you? A. Oh, yes, I assumed that it would be absorbed by the lawyers. That was my assumption at the time, but I mean I didn't take any notice of its technical position.

Q.17. Then after that you received an 11 per cent dividend from the 30 per cent fund, did you? A. Well, we received the 11 per cent dividend, but it was out of that 30 per cent.

Q.18. How was that delivered to you? A. Mr. Haid delivered that to me.

Q.19. That is Mr. Paul Haid? A. In my office.

Q.20. In Philadelphia? A. Yes.

Q.21. He made a personal call? A. Yes.

Q.22. Did he have any other business with your firm on that occasion? A. No.

Q.23. Except this transaction of giving you a check? A. He came there apparently for this specific transaction.

Q.24. Did he tell you how he happened to make a call on you in Philadelphia for that purpose? A. No.

Q.25. Did you ask him? A. No.

Q.26. When he came there with a check just what did he say to you? A. Well, I have been trying to recall the conversation, but I haven't been successful in any way, getting down to accurate words about the thing. I knew that we were receiving this 11 per cent which was something that I had not expected to get. In other words, I had felt all along after we got our 50 per cent that the chances were that the rest of the money would be

absorbed in legal expenses so when we got the 11 per cent, why, naturally, I was pleased to see that.

Q.27. What did he say to you? A. And I simply accepted it as something that I hadn't been looking for.

Q.28. Well, you paid out some money— A. (Interrupting) Yes.

Q.29. (Continuing)—at that time? A. Yes.

Q.30. You paid 5 per cent? A. Yes.

Q.31. How did you happen to do that? A. Mr. Haid asked me to have a check drawn to the order of Mr. Street as agent.

Q.32. What did he tell you it was for? A. For expenses of litigation, that it was a contribution toward the expenses of litigation, and I charged it—well, I am saying "contribution" because it was not a definite payment I mean, of a particular bill or anything like that. It was like creating a fund out of which the lawyers and other expenses and that kind of thing would be paid, and I assumed that it was a bookkeeping matter.

Q.33. How did you happen to issue the check to C. R. Street? A. At Mr. Haid's request.

Q.34. Did he ask for the immediate issuance of it? A. Well, yes, he asked me for the check, and I saw no reason for delay, and said, "Yes," I could give it to him right then and there, and I ordered the check made. I remember leaving the office and going to the cashier and instructing them to draw the check.

Q.35. And he waited for it? A. Yes.

Q.36. Did you cause a requisition to be issued? A. Yes.

Q.37. A requisition in writing? A. Well, I simply wrote the name "Charles R. Street, Agent," on a slip of paper and the sum and handed that to the cashier and asked them to draw a check for that sum in that amount with instructions to charge it to legal expenses. '

Q.38. You did that? A. Yes.

Q.39. What became of that slip of paper? A. Well, now, it may have been put in the file, in our file.

Q.40. Do you ordinarily keep your requisitions for checks? A. Well, we don't have a system of regular numbered requisitions and that sort of thing in our office. It is a small concern, and we are so closely connected with each other that we are in close touch.

Q.41. But when you write an order for a check is that usually put in a voucher file? A. Why, the cashiers

will hold onto that and put it in the file where other things are kept.

(Check and photostatic copy of book of account, handed to the reporter, were marked for identification as "Defendants' Exhibits 182 and 183, EFM," respectively.)

Q.42. I hand you Defendants' Exhibit 182, which I now offer in evidence. Please state if that is the check that you caused to be issued to C. R. Street, Agent. A. Yes, that is the check and that is my signature.

(Said Defendants' Exhibit 182, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

V 1696

STATE OF PENNSYLVANIA

$ 1876.68

No. 93806

Philadelphia, March 24, 1936

PAY TO THE ORDER OF — C. E. ARNOLT, AGT. —

THE SUM OF $1876 AND 68 CTS DOLLARS

THE PHILADELPHIA NATIONAL BANK

3-1

Philadelphia, Pa.

FOR DEPOSIT WITH
SILVA BATTERIAL BOND
AND TRUST COMPANY
OF CHICAGO

PAID THROUGH CHICAGO CLEARING HOUSE

P 11 M

MAR 26 1936

THE
CHICAGO

V 1876

Q.43. Will you look through the file and—this is the file that you furnished to Mr. Haid? A. Yes.

Q.44. And see if you find that written order that you said you signed. A. No, I don't see it.

Q.45. See if you find the correspondence which you gave to Mr. Haid, and see if you made any reference to it in that. A. That is my handwriting on that (indicating).

Q.46. That is the handwriting on a letter dated in 1937? A. Yes.

Q.47. It wouldn't be that? A. No, that memorandum is not here.

Q.48. Can you give any explanation as to why that written order has disappeared? A. Only that it was just a memorandum from which the check could be copied.

Q.49. But you say that is usually kept and he usually holds onto it. A. Not necessarily, no. There are lots of cases where memorandums are given like that, and after the transaction it would be destroyed, but there are occasions when there might be something specific that they would keep it.

Q.50. Didn't you testify a moment ago that he usually held onto them? A. Well, I can't say now that I think of it, that that is customary because they are not numbered things. There are special cases where they would be kept, and certain other cases where they would just be thrown aside, and in that case I feel sure it was just nothing but a piece of paper with the name and the amount of money. You see what I mean, there would be no particular reason for keeping it.

Q.51. Was there any statement on it as to what it was for? A. No.

Q.52. Nothing on it? A. No, my recollection is that I just simply told the cashier to charge it to legal expenses.

Q.53. To charge it to legal expenses? A. Yes.

Q.54. Now, I hand you Defendants' Exhibit 183, which purports to be photostatic copy of one of your books of account? A. Yes.

Q.55. I notice here a number, "16926" under the heading "Voucher number." A. Yes.

Q.56. Where is the voucher? Where is the voucher? A. Well—

The Special Master: Wait a minute. He didn't answer the question.

Q.57. (By Senator Hollingsworth) Where is the voucher? A. Well, now, it is possible that that slip might have been used as a voucher in that case. We number all of these things and very often the voucher number is put on the check, or it may be if we have a regular bill or a statement of any kind, then that is used as a voucher.

Q.58. But where is the voucher? You gave it a voucher number, 16926. A. Yes.

Q.59. On your book of account. A. 16926.

Q.60. And I notice also on your check you have "16926." Where is that voucher? A. That is largely an identifying number.

Q.61. I know, but where is the voucher? A. Well, now, I can't say.

Q.62. All right. A. I can't say.

Q.63. Have you seen it since this litigation started? A. No.

Q.64. Have you looked for it? A. No.

Q.65. You knew what this controversy was about, didn't you? A. Yes.

Q.66. And you knew that the entries made contemporaneously with the issue of the check would have some bearing on the controversy, didn't you? A. Yes.

Q.67. You never looked for the voucher? A. No, all I did was furnish these copies. I ordered these made.

Q.68. You haven't looked for the voucher? A. Yes, it never occurred to me to look for that.

Q.69. It never occurred to you? A. No, because the important thing was the entry and the check.

Q.70. You don't know whether you have got the entry or not? A. No.

Q.71. You have made no search for it? A. No.

Q.72. Yet you were called upon to produce all of your records in connection with it? A. Yes.

Q.73. You produced the check? A. Yes.

Q.74. You produced the book of account? A. Yes.

Q.75. But you never produced the original entry that caused the check to be issued?

Mr. Bullitt: Just a minute, now. Where was he called on to produce all of them?

Senator Hollingsworth: Mr. Haid asked for them, look in his letter.

Mr. Bullitt: Wait a minute.

Judge Henson: I thought you said you did.

The Special Master: Well, he answered the question. He asked him was he called on and he said yes.

Mr. Bullitt: I want to know where he was called.

The Special Master: You will be permitted to ask questions.

Judge Henson: Since it is interrupted, Senator—

Mr. Bullitt (Interrupting): I just want to know where he was called on.

The Special Master: You will be permitted to ask that question.

Judge Henson: Introduce Exhibit 183.

Senator Hollingsworth: I now offer in evidence Defendants' Exhibit 183.

(Said Defendants' Exhibit 183, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Defendants' Exhibit No. D 183 is page 177 of the cash book of THE INSURANCE CO. OF THE STATE OF PENNSYLVANIA which shows entry, among others, as follows, check No. 16926, C. R. Street $1,876.68, charged under column entitled "Legal Expenses."

Q.76. (By Senator Hollingsworth) I wish you would read that entry in regard to this check on Exhibit 183. A. "C. R. Street, total $1,876.68." Now, then—

Q.77. Just read the entry, please, sir. A. This is a part of the entry here.

Q.78. All right. A. It goes over here (indicating), and it is in the column "Legal Expenses." That is the account to which it was charged.

Q.79. All right. Now, is this page a part of the original page? A. It is a two-page book in which the entries run across the two pages.

Q.80. Run across two pages, in other words, these fit together, is that right? A. Yes, that is the idea.

Q.81. Now, I notice on this page here (indicating) you have a column in which you generally outline in every instance the nature of the item, don't you? A. Yes.

Q.82. The C. R. Street check has no entry in that column at all? A. No descriptive entry, that is correct.

Q.83. That is correct, isn't it? A. Yes.

Q.84. Every other item on that page does have a description entry, doesn't it? A. Yes.

Q.85. Every other item? A. Yes.

Q.86. There isn't a single one where the place for the description is fixed in the book, there isn't a single one that omits that? A. That is true, yes.

Q.87. Can you explain that? A. Only that we had no definite information as to the distribution of the money, that is all.

Q.88. You had no definite—did you ask Mr. Haid? A. My recollection is that we would probably get some accounting later. In other words, being paid out on a percentage basis indicated that it was creating a fund out of which payments would be made, and then there probably would be an adjustment later of the account in a general way. In other words, I figured that the exact amount of 5 per cent would not be, probably, distributed to the penny. It might be too much or might be too little, eventually.

Q.89. Oh, you didn't know that the amount had been determined or fixed? A. No.

Q.90. You thought this was a call for advancement and that there would be an accounting? A. Yes.

Q.91. Of course, you got that information from Mr. Haid? A. Well, yes, I must have gotten my impression because that is what I had in my mind all the time.

Q.92. There was no one else for you to get those impressions from, was there? A. No.

Q.93. Now, did you ask Mr. Haid what the nature of the legal expenses were? A. No, I took it for granted they were the ordinary fees and expenses.

Mr. Bullitt: Just let him finish his answers.

Senator Hollingsworth: All right.

The Special Master: Did you finish what you wanted to say?

A. I think so. What I meant to say was that I took for granted that there would be various lawyers and various kinds of expenses, and there would be a distribution, that this money was being collected in this way as a bookkeeping matter. In other words, it was putting in the hands of Mr. Street a fund out of which he would pay these things rather than to be doing it directly from custodian money.

Senator Hollingsworth: All right.

The Special Master: Well, did you know at that time that the money was already in the hands of Mr. Street and Mr. Folonie for that purpose?

A. No, I did not.

The Special Master: If you had received any such information before that by circular, you didn't have it in your mind, is that what you mean?

A. Well, I don't think I ever knew that. I don't recall even reading it in any bulletin.

The Special Master: Let me ask you one other question: There was some talk about you were called upon to produce copies of records, and you did produce everything but a copy of a voucher.

A. Yes, sir.

The Special Master: When they called on you to produce the record you naturally realized that the check would be something that they would want?

A. Yes.

The Special Master: And that the book entries would be?

A. Yes, sir.

The Special Master: If you had any letters about it they would want that?

A. Yes.

The Special Master: Did it occur to you that a voucher would be involved?

A. No, it did not, because we do not use the usual voucher system. In other words, whenever—we have no uniform method of vouchers like many offices do, where they are numbered and all that kind of thing, and kept account of. We use a voucher number as a matter of index more than anything else.

The Special Master: You did not purposely refrain from furnishing a copy of any voucher?

A. No.

The Special Master: And are you still willing to look to see if you have one?

A. Yes.

The Special Master: And furnish us a copy if you have one?

A. Yes.

Q.94. (By Senator Hollingsworth) Now, did Mr. Haid—

The Special Master: I don't attach much importance to that. That would be a very easy thing to overlook.

Q.95. (By Senator Hollingsworth) Did Mr. Haid tell you that there would be an accounting? A. I can't say so in words. In other words, I can't repeat any word that he might have said, but I had it in my mind and must have gotten it from him that there would be some

accounting. I said that was a natural assumption because of the sum being on a percentage basis.

Q.96. Did you ever get an accounting? A. No.

Q.97. Well, a fixed sum for attorneys' fees, if apportioned among the companies, would be on a percentage basis, to raise a certain amount of impoundments? A. Not necessarily because I thought it involved other legal expenses, so far as that is concerned.

Q.98. What other legal expenses? A. How many lawyers might be involved, well, there are always costs of various kinds.

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 184, EFM.")

Q.99. I show you Defendants' Exhibit 184. A. Yes.

Q.100. Which I offer in evidence, which purports to be a letter addressed to you from Messrs. Hicks and Folonie? A. Yes.

Q.101. Dated February 24, 1936? A. Yes.

(Said Defendants' Exhibit 184, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

HICKS & FOLONIE
ATTORNEYS AT LAW
105 WEST ADAMS STREET
STATE 0672-4 CHICAGO

February 24, 1938.

Mr. John J.P. Rodgers,
Vice-Pres., The Insurance Company of the
State of Pennsylvania,
306-310 Walnut Street,
Philadelphia, Pa.

In re: Missouri Rate Case
-Federal Court-

Dear Sir:

We have your letters of February 18 and 19, addressed to Subscribers Actuarial Committee, which have been transmitted to us for reply.

You were not to receive 50% of all your impoundings, but 50% of the amount impounded to and including your impounding of July 15 (including all policies effective prior to May 1, 1936). Provisions of the Decree, summarized, are as follows:

R. 1: You are invested with the title to 50% of all net funds impounded and subject to impounding.

R. 2: An order of disbursement is made "as a partial payment on account," which is to be "an amount equivalent to 50% of the net fund impounded with the Custodian by plaintiff up to July 15, 1936." This is subject to the proviso that if such distribution "would result in distributing all or within five per cent (5%) of the total net fund impounded by the plaintiff, the Custodian is authorized to reduce the percentage or amount of the distribution to the plaintiff to an amount that will leave in the possession of the Custodian after making provision for refunds for the assured under paragraph A, a sum equivalent to five per cent (5%) of the total net fund impounded by the plaintiff." The balance not so distributed after ordering distribution to Street and Polonie, the trustees, "shall be held and retained by the Custodian subject to the further order of the Court."

The payments so to be made to you "shall be made by the Custodian as far as practicable by the delivery to the party entitled to receive payment, of securities held by the Custodian, to be selected by the Custodian, which shall be

Mr. John J. P. Rodgers February 24,1938
-2-

accepted and credited on the amount payable at the market value thereof (including accrued interest) as reflected by the closing quotation on the New York Stock Exchange at the close of business on the last business day preceding the date of the Custodian's making delivery or ordering the shipment thereof."

We trust these advices will put you in possession of information enabling you to check the propriety of the amount received by you. The Custodian has been very careful and conscientious about the matter and the probabilities are that the amount remitted to you conforms to these requirements. If this letter does not fully answer your inquiries, please address further inquiries to the writer, who will be pleased to help you.

Yours very truly,

HICKS & FOLONIE,

BY:

Q.102. I notice it says, "We have your letters of February 18th and 19th"— A. Yes.

Q.103. (continuing) —"addressed to Subscribers' Actuarial Committee, which have been transmitted to us for reply." A. Yes.

Q.104. Do you have copies of those letters with you? A. No.

Q.105. Do you have them in your files? A. Yes, I am sure they are in the file. Those were letters of inquiry. After we received our bonds and cash, I made some inquiries. In the first place, the first amount of cash was not correct, and they had to send us some $900.00 more to balance up the 50 per cent, and then I think, in connection with that, I made some inquiry as to the bonds, about how they were to be used, that is, at what values they were to be used. In other words, the bonds and cash originally sent us did not begin with 50 per cent of our impounded premiums. I didn't know whether the difference was in the value used for the bonds or whether it was a mistake in cash. It turned out to be a mistake in the cash afterwards, so that was the reason for making the inquiry.

Q.106. But do you have those letters? A. Yes, I am sure we have them.

Q.107. Would you be willing to produce those here? A. Yes.

Q.108. Now, I notice here in this letter after telling you about the custodian's possession of property, "The balance not so distributed after an order of distribution to Street and Folonie, the Trustees, shall be held and retained by the custodian, subject to the further order of the court," etc. A. Yes, sir.

Q.109. You knew that Street and Folonie were trustees, didn't you? A. Yes.

Q.110. You had received that letter just about a month before you issued this check? A. Yes.

Q.111. Now, when you got the request from Mr. Haid to pay legal expenses, you knew that Street and Folonie had 30 per cent for that purpose? A. Well, I can't say that I knew at the time. In other words, I doubt whether I read the bulletin to the extent of posting myself on the exact status of the case. In other words, this litigation was going on for so many years that we got tired reading the bulletins after a while, and skimmed over them. In other words, found out what the sense of it was and passed them along to file.

Q.112. I hand you Defendants' Exhibit 105, do you recall that as being a bulletin dated February 4, 1936, from the Actuarial Committee?

Mr. Berger: Here is the original if you would rather have it.

Q.113. (By Senator Hollingsworth) Here is the original, which may call it more clearly to your attention. A. No, I can't say that I would identify that any more than I would any other one of the bulletins received. Of course, some of the things in there might make me say that I read certain things.

Q.114. And 30 per cent to C. R. Street and R. J. Folonie, Trustees? A. Yes.

Q.115. I call your attention to paragraph 10. A. Well, I haven't any doubt but what I received that, but I wouldn't be able to say definitely that I did because the only thing that I see in there are these dates about the period covered and the 20 per cent and the 50 per cent, etc.

Q.116. Now, it didn't occur to you at the time you gave Mr. Haid this check for which he made a personal call— A. Yes.

Q.117. (Continuing) —that you had in your office received a letter from the Subscribers' Actuarial Committee in which they advised you that money coming into the hands of C. R. Street and R. J Folonie, Trustees, "will be employed to discharge any debts incurred by or under the direction of this Committee, agreed amounts payable to the Superintendent of Insurance and for his counsel, court costs, custodian's fees, attorneys' fees and expenses of counsel for the companies, costs of administering and safeguarding money in the hands of the trustees, contingent allowances or charges, any remaining balance subject to distribution to the companies will not in the nature of the matter be finally and completely distributable for sometime." A. That was not in my mind at the time, I am sure.

Senator Hollingsworth: I think that is all.

Cross Examination by Mr. Bullitt.

XQ.118. Who called on you to produce all your records about this Missouri rate litigation situation and the payments to Mr. Street? A. Mr. Haid. I had a letter from him.

XQ.119. Have you got it with you? A. No, I have not.

The Special Master: What did it say, do you remember?

Mr. Bullitt: I can get a copy of it and tell you exactly what it said.

XQ.120. (By Mr. Bullitt) I hand you a circular dated March 20, 1939, on the letterhead of the Insurance Executives Association, and ask you if you ever saw the original of that before, and whether it refreshes your mind at all as to any call that Mr. Haid made on you for records. A. Yes, without reading every word, that is, no doubt, the letter that I received and to which I answered and sent these papers.

(Said circular, handed to the reporter, was marked for identification as "Defendants' (Plaintiffs') Exhibit 185, EFM.")

Mr. Bullitt: Introduce that as 185.

(Said Defendants' (Plaintiffs') Exhibit 185, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 185.

On the letterhead of:

Insurance Executives Association
Paul L. Haid, President
116 John Street
New York City

March 20, 1939

Missouri Litigation

In connection with Missouri litigation in March or April 1936, you made a payment to Charles R. Street or R. J. Folonie or Street and Folonie of 5% of the premiums of your companies impounded in Missouri. In connection with an investigation being made by the United States District Attorney, he has asked me to secure the following data:

1. The original and one photostat copy of the cancelled check, or checks, making up the 5% of impounded premiums.

2. The original vouchers, records, correspondence, memoranda and data of whatsoever nature and character relating to or pertaining to these checks and payments.

3. One photostat copy of the 'log' of these checks, *i. e.*, photostat copies of the pages of the cash book entries, the ledger entries, and the journal entries in connection with this transaction.

If, as is probable, you issued one check for your group of companies in the payment of the 5% in 1936, in that event attach to the check a memorandum giving the names of the companies and the amounts of their participation making up the aggregate.

I suggest that while you are making the photostat copy of the cancelled check or checks that you retain an additional photostat copy for your own records, and that you keep a copy for your own records of whatever data you send to us, as enumerated in Item 2.

I cannot impress upon you too strongly the importance of the above mentioned data being placed in my possession, either by personal delivery or by registered mail, at the earliest possible date, but *not later* than Friday of this week. I assure you that it will be properly safeguarded by me until I turn it over to the District attorney on March 28. I am hopeful that by compliance with my request you will be spared the inconvenience of making the delivery of these data in person.

Very truly yours,

P r e s i d e n t"

XQ.121. (By Mr. Bullitt) When you received that letter from Paul L. Haid, dated March 20, 1939, Defendants' 185, did you comply with that request? A. Yes.

XQ.122. Did you get from your records everything that was requested in that letter, as far as you could find them? A. Yes, I examined the files along with the men that kept the files and all the details, and we went through particularly trying to find any letters that might bear on the subject, and the only thing we found was this one that I was looking at a while ago.

XQ.123. And you furnished that to Mr. Haid for the United States District Attorney at Kansas City over four months ago? A. Yes.

XQ.124. Did you ever receive any request from the District Attorney or Mr. Haid or anybody else for any additional data? A. No.

The Special Master: Of course, that calls for vouchers and he didn't produce the voucher, but he has testified that he didn't intentionally leave it out.

XQ.125. (By Mr. Bullitt) Did you look to see if you had any vouchers, records, correspondence, memoranda or data of whatsoever character or nature relating to or pertaining to this March, 1936, payment? A. Yes, we thought we exhausted every file and everything we had pertaining to the subject.

XQ.126. Did you furnish everything that you had that was in your files? A. Yes.

XQ.127. The question was asked you about the entry of voucher 16926 in your cash book to C. R. Street for $1,876.68, and Mr. Hollingsworth commented on the fact that there was no explanatory entry opposite the name of Mr. Street, although there was an explanatory entry opposite the name of every other item on that page. Isn't it a fact that on that same page there is the same explanatory item for the $1,876.68 under the heading "legal expenses"? A. Yes, that is true.

XQ.128. And it was allocated at that time to legal expenses? A. Yes.

XQ.129. Now, in the— A. (Interrupting) The cashier that had that information had no other entry.

The Special Master: I don't see how the entry could have been any more definite, in view of the witness' testimony that he didn't know just what it was for unless he was going to deliberately put it down.

A. It wasn't necessary to make any other entry than just to put it in that account.

XQ.130. (By Mr. Bullitt) I call your attention to the circular of the Subscribers' Actuarial Committee, Defendants' 105, dated February 4, 1936, paragraph 10, which Mr. Hollingsworth read to you in full regarding the 30 per cent of the impounded funds that was to come into the hands of Street and Folonie to be employed to discharge, among other things, attorneys' fees and expenses of counsel for the companies, costs of administering and safeguarding money, etc., and contingent allowances or charges, with the postscript that state court cases still to be decided. Look at that. Now, then, when you got this 11 per cent from Street and Folonie, Trustees, you knew that was a part of the 30 per cent that they held, didn't you? A. Yes, I knew it was a part of the 30 per cent that we had not received.

XQ.131. And when you paid back to Mr. Street this $1,876.68, you paid it back out of the 11 per cent that you had just received the same day, didn't you? A.

Well, yes, theoretically, it went into the same bank account.

XQ.132. So that $1,876.68 that you paid back to Mr. Street at his request was a part of the 30 per cent to be devoted to legal expenses and costs, etc., of that litigation? A. Yes, the exchange of checks would naturally bring about that condition.

XQ.133. So this 5 per cent payment you made was merely a payment to him to pay expenses mentioned in this very letter of the Subscribers' Actuarial Committee? A. Yes, and I took it to be just a bookkeeping matter.

XQ.134. Now, did you or your company or anybody connected with it as far as you know, ever ask Mr. Street by telegraph, telephone, letter or personal conversation, to do anything for you about this Missouri litigation? A. No.

XQ.135. Did you or anybody connected with your company ever authorize Mr. Street or tell Mr. Street or acquiesce in Mr. Street's paying any money to Mr. Pendergast or Mr. O'Malley or Mr. McCormack or anybody else to get this compromise of February 1, 1936, or the May, 1935, agreement through? A. No.

Mr. Bullitt: All right, that is all.

The Special Master: Did you notice whom the check was signed by when you got your 11 per cent?

A. Yes, signed, I am sure, by Mr. Folonie and Mr. Street, as trustees.

The Special Master: When it said "Trustees," did you have any idea what they meant by signing it "Trustees"?

A. I didn't question it at the time.

The Special Master: I know you didn't question it, but what did that mean to you when you got a check for 11 per cent of your impounded premiums signed by Folonie and Street as trustees?

A. I took it to be like the rest due out of the 30 per cent.

The Special Master: That it was in their hands?

A. Something I never thought I would get.

The Special Master: It was in their hands and they were at least calling themselves "Trustees"?

A. Well, I can't say that I gave it any particular thought, simply—

The Special Master: It never occurred to you that these two men were paying you your premiums and you were paying them right back to one of them and that

these men already had the money to pay expenses? That just didn't occur to you?

A. Well, all that I thought I was doing was furnishing the money directly for us in paying legal expenses and in doing it that way I was providing a special account out of which Mr. Street could act on it, that is all.

The Special Master: It never—

A. (Interrupting) It was just a bookkeeping matter, in other words.

The Special Master: It never occurred to you that the man you were paying the money to already had the money?

A. No.

The Special Master: That you were getting from him the money you were paying to him?

A. No, it didn't impress me that way at all.

The Special Master: It does, though, now that you look back on it?

A. Yes, exactly.

The Special Master: That is all.

Senator Hollingsworth: That is all.

(Witness excused.)

JOHN M. THOMAS, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. Mr. Thomas, you are president of the National Union Fire Insurance Company? A. Yes, sir.

Q.2. Did you occupy that position in 1935 and 1936? A. Yes, sir.

Q.3. You were familiar, I presume, at that time with the Missouri rate litigation in cases pending in the federal court at Kansas City? A. Well, to tell you the truth, the Missouri rate litigation cases became so involved that I left it very largely in the hands of the committee. I gave up five years ago trying to keep track of it.

Q.4. You knew that your company had a case pending? A. Oh, yes.

Q.5. In Kansas City? A. Oh, yes.

Q.6. And you say the committee was representing your company in looking after that? A. That is right.

Q.7. What was that committee? A. Subscribers' Actuarial Committee.

Q.8. Did you know Mr. Street? A. Very well, have known him for many years.

Q.9. You knew he was chairman of that committee at that time? A. Yes, sir.

Q.10. And you knew that as a practical matter he was the person handling the litigation? A. Yes, sir.

Q.11. For your company and the other companies? A. Yes, sir.

Q.12. That was satisfactory with you? A. Yes.

Q.13. Now, you heard, I suppose, about May or June, 1935, that a settlement agreement had been entered into pertaining to these cases? A. Yes, sir, I suppose I did.

Q.14. And you were advised about February, 1936, that the federal court had entered a decree approving the settlement? A. I assume I was. Of course, I don't remember the dates or anything of that sort.

Q.15. Didn't you receive a letter from the committee? A. Yes, a regular circular letter.

Q.16. Sent to all the companies, or purported to be sent to all of the companies? A. Yes.

Q.17. And that advised you of the settlement and the terms thereof? A. Yes, sir.

Q.18. You knew that under the terms of the settlement the policyholders were to get 20 per cent and the companies 50 per cent immediately and the 30 per cent was to be turned over to Mr. Street and Folonie, as trustees, out of which fund they would pay all of the expenses of litigation, including attorney fees, court costs, and everything else, and if any was left it would be disbursed to the companies? You were familiar with that? A. Oh, yes, I must have known that, of course.

Q.19. Now, that settlement was satisfactory with your company? A. Yes.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 186 to 189, EFM," inclusive.)

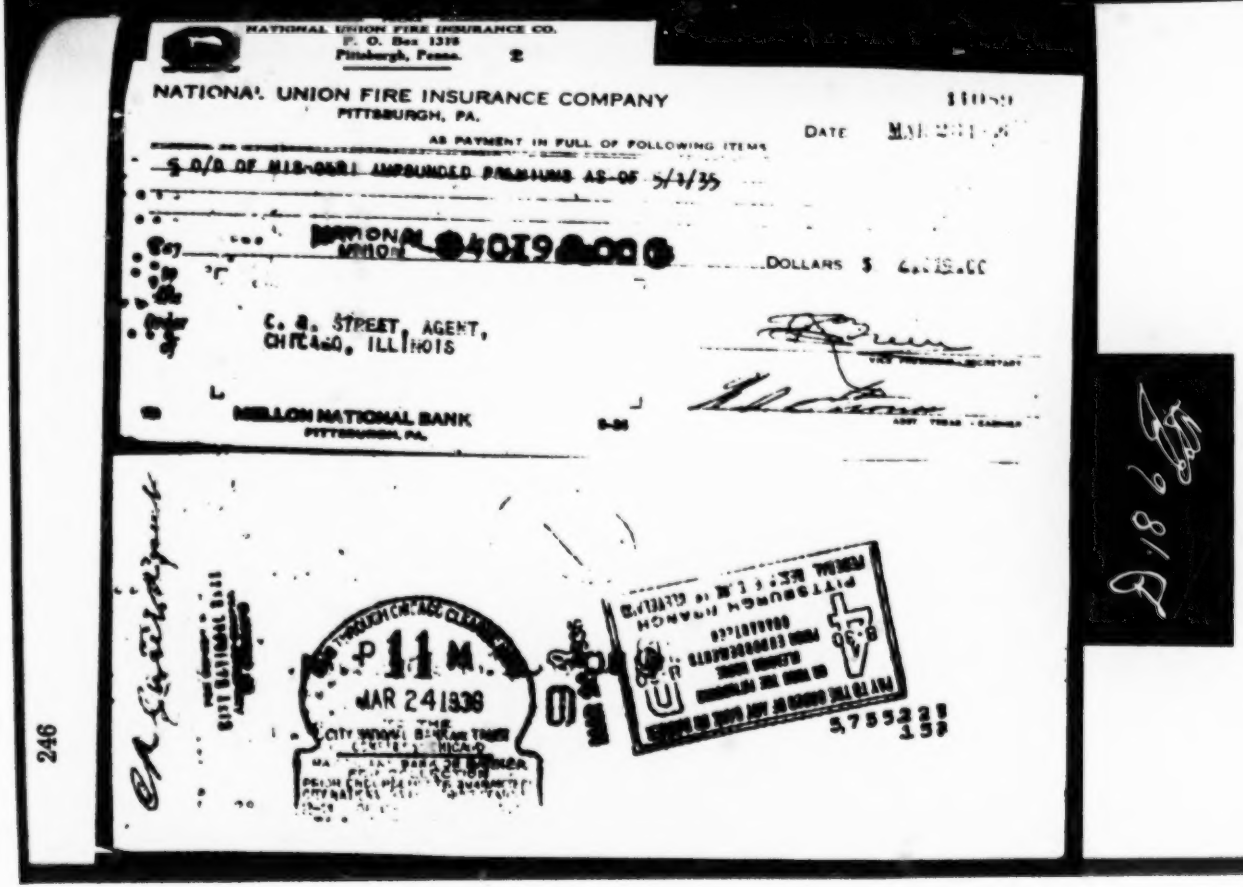
Q.20. Now, I will show you Defendants' Exhibit 186, which I now offer in evidence, and which purports to be a check issued by your company to C. R. Street, Agent, in the amount of $4,019.00, dated March 23, 1936, and will ask you to detail the circumstances surrounding the issuance of that check. A. What is the number of that, 41089?

Q.21. What did you say, sir? A. Here it is. Well, my file refreshes my memory on it. A letter from Mr. Street, dated March 17, 1936, a copy of which you have—

Q.22. That letter is numbered Defendants' Exhibit 188. A. Yes.

Q.23. Which I now offer in evidence.

(Said Defendants' Exhibits 186 and 188, so offered in evidence, having been previously duly marked, are in words and figures as follows:)


NATIONAL UNION FIRE INSURANCE CO.
P. O. Box 1318
Pittsburgh, Penna. 2

NATIONAL UNION FIRE INSURANCE COMPANY
PITTSBURGH, PA.

DATE

AS PAYMENT IN FULL OF FOLLOWING ITEMS

S O/A OF MISCELLANEOUS UNEARNED PREMIUMS AS OF 5/3/35

DOLLARS $

C. A. STREET, AGENT,
CHICAGO, ILLINOIS

MELLON NATIONAL BANK
PITTSBURGH, PA.

THROUGH CHICAGO CLEARING HOUSE
P 11 M
MAR 24 1936

PITTSBURGH PENNA
PAID

5755221
139

246

D 18 6

WESTERN DEPARTMENT
CHICAGO

Great American Insurance Company
New York

C.R. STREET
Vice President
R.D. GREGORY
Secretary

CHICAGO March 17, 1936.

Dear John:

Check to Columbia Hotel $8841

Enclosed check for $8,841.79 is 11% of the amount of premiums you had impounded in Missouri as of May 1st last.

Please credit the check accordingly and then send me your check for 5% of the amount of such impounded premiums as of May 1st, which according to our records were $80,340.00. $4,017.00

Was in New York last week and this was the arrangement made with some of the "big boys" - will explain when I see you at our April meeting or sooner.

Make check to me as Agent rather than personal.

Yours very truly

C R Street

Mr. John M. Thomas, President,
National Union Fire Insurance Co.,
139 University Place,
Pittsburg, Pa.

D 188

Q.24. Just explain all you know about the circumstances surrounding that check and the issuance thereof. A. Well, I received this letter from Mr. Street and answered it on March 23rd, and I suppose you have a copy of that there, haven't you?

Q.25. Yes, I have that. A. That (indicating) is it.

Mr. Holman: That is Defendants' Exhibit 189, which I now offer in evidence.

(Said Defendants' Exhibit 189, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

March 23rd, 1936

Mr. C. R. Street
c/o Great American Insurance Co.,
310 South Michigan Avenue
Chicago, Illinois

Dear Mr. Street:

We have been pretty badly disorganized here in Pittsburgh due to the disastrous and unprecedented flood conditions, so that your letter of the 17th enclosing a check for $8,871.41 did not reach me until Friday. We have been without light and heat until this morning, when we are going again.

The second paragraph of your letter states that the amount of National Union impounded premiums in Missouri as of May 1st, according to your records, is $80,340. I am assuming this is in error, because the correct amount is $80,379.93, and your check for $8,841.79 is just 11% of that correct figure.

Enclosed is our check for $4,019.00, payable to you as agent, which is 5% of the correct figure of $80,379.93. This I hope you will find correct.

I shall be very much interested in getting more complete information about the transaction when I see you at White Sulphur in April.

Yours very truly,

8871.41
4019
4852.41

D-189

A. Yes, sir. Well, I think it speaks for itself, sir.

Q.26. Mr. Street wrote you a check for $8,841.79, which was 11 per cent of your total impounded premiums, is that true? A. Well, yes, our bookkeeper made it a little different here. He quoted it $80,340.00, and our book shows $80,379.93. It is an inconsequential difference.

Q.27. All right, then. Now, in this letter he requested you to send him a check for 5 per cent of your impounded premiums? A. Yes.

Q.28. Payable to him as agent rather than personal? A. Yes.

Q.29. Is that true? A. Yes, sir, that is what he asks here.

Q.30. Now, I want to call your attention to this statement in his letter, "Was in New York last week, and this was the agreement made by"— A. (Interrupting) "Arrangement," I beg your pardon.

Q.31. (Continuing)—"the arrangement made with some of the 'big boys.' Will explain when I see you at our April meeting or sooner." A. Yes.

Q.32. Now, first I want to ask you who is understood by people in insurance circles as being the "big boys." A. Well, sir, that is pretty hard to answer. There are a lot of "big boys" in the insurance business.

The Special Master: Let me ask you, doesn't that mean just the same as if I was talking about politics. If I said, "I have been talking to the big boys," it would partly depend on who you thought were the big boys and partly who I thought were the big boys, and you wouldn't know exactly whom I meant, but you would have an idea that it might include this man or the other man?

A. I would have a general idea of some of the important men in the business.

The Special Master: But it isn't a club, and it isn't a coterie or a definite number of men.

A. No, and doesn't mean any particular number of individuals.

Q.33. (By Mr. Holman) I understand. You couldn't read Mr. Street's mind about that. A. No.

Q.34. But I am asking you whom you understood to be the "big boys." A. Well, I don't know that I had any specific people in mind.

Q.35. That is what I am asking you. A. Yes, I didn't—

The Special Master: I thought that he meant he had consulted some prominent people in the insurance world, but hadn't told you who they were.

A. That is it precisely.

Q.36. (By Mr. Holman) You thought he probably meant the executives of some of the larger insurance companies? A. Yes, very naturally.

Q.37. The executives of the Home and Great American? A. Perhaps, yes, some of the larger companies that had a much greater stock. We are a relatively small participant in this, and we would naturally follow the lead of those who were directly interested.

Q.38. Didn't it occur to you as unusual he didn't set out in the letter what this arrangement was? A. Not at all.

Q.39. If it had been a proposition that was open and above board, perfectly honest, couldn't he have detailed it in this letter? A. It didn't seem strange to me at all, knowing Mr. Street as I knew him.

Q.40. Why do you say that? Do you wish to explain that answer?

The Special Master: Try to explain that carefully. Let me make you an explanation before you start. You are the man that knows about this thing. It subsequently turned out that this transaction was not legitimate. Now, when it comes to your side, you are the only person that knows it. It behooves you to give just as full an explanation of the psychology and of everything involved as you possibly can. Can you see that?

A. All right, I think I can.

The Special Master: All right.

A. In the first place, as I stated in the beginning, this Missouri litigation had been running for years, ran way back to 1922, and then this later suit, I think originated about '29 or '30. It had become very involved. If a man attempted to keep track of all of those things he wouldn't have any time to attend to his daily duties. We are accustomed in our business to leave joint action to a committee. Necessarily, it must be so. Mr. Street I had known ever since I was a boy, seventeen, eighteen years old, used to work for him, worked with him. He kind of helped train me in the business, and I never knew that man to turn a crooked trick in my life. I have known him intimately for 35 years, longer than that, 40 years, and it never occurred to me that there was anything unusual or out of the way about it. Such a thought never crossed my mind.

The Special Master: The long background outweighed the peculiarity of the particular letter in your estimate of the whole transaction, is that the idea?

A. Yes, and I might go just a step farther. I don't know, I think the average individual not in the insurance business, fails to realize what a large proportion of our business is transacted on good faith. Now, it isn't anything unusual when a matter comes up requiring joint action by a lot of companies, to place it in the hands of a committee and forget it, knowing that ultimately you will get a correct account of any contribution or any assessment you may be called upon to make. That is ordinary business transaction. We don't think anything of it. I have been in the business a great many years. If anything of this sort has ever been done before I never knew it. I wasn't suspicious. It never occurred to me to think there was anything underground about it.

Q.41. (By Mr. Holman) In other words, you had never had such an experience to put you on your guard? A. Not in the slightest.

Q.42. You had never seen anything dishonest about the man to put you on your guard? A. No, sir.

Q.43. It was a joint matter that was being handled by a committee, and you had not even attempted to look after the details? A. Of necessity it had to be handled by a committee. I would do whatever the committee asked me to do.

Q.44. Did you understand this was a communication from the committee? A. I understood it was Street, and Street was the chairman of the committee. Now, they didn't always address their communications in this formal way, the chairman of the Subscribers' Actuarial Committee or anything of that sort.

Q.45. Just tell me— A. (Interrupting) Well, now, you see, this has been some years ago, 1936, three years ago. I don't know what I thought, but I think I am safe in saying that he asked for this and I just sent it to him, feeling and knowing that later on we would get an accounting for it in the regular way.

Q.46. And in this letter he didn't attempt to say or give you any idea what it was for? A. No.

Q.47. And it didn't enter your mind to question what it was for? A. No, sir. That may seem strange to you, but again I repeat, we are accustomed in our business on a complicated matter to have a committee to

handle it. We turn it over to the committee and forget it.

Q.48. You did that because of your confidence in Mr. Street? A. Absolutely.

Q.49. Would you have done it if some other insurance executive had asked you? A. I rather think I would, probably not so readily. I might have questioned it. That is purely supposition, I don't know what I would have done.

The Special Master: That depends on who the other man was?

A. On who the other man might be.

The Special Master: Whether he was chairman of the committee or not?

A. Yes, sir.

Q.50. (By Mr. Holman) But you knew at that time that these trustees, Mr. Street and Mr. Folonie, had a fund out of which to pay any and all expenses of this Missouri litigation? A. Well, I suppose I did because I evidently got the committee's letter, a copy or circular which was read here a while ago.

Q.51. That is right. A. But if I connected it up with that at that time, I don't recall it now, and I don't imagine I did.

Q.52. You knew this was in connection with the Missouri litigation? A. Oh, yes.

Q.53. You knew that? A. Yes, sir.

Q.54. Now, he told you in this letter that he would explain it to you at your April meeting or sooner? A. Yes, that means the April meeting.

Q.55. What was his explanation of it? A. I don't know. I didn't get to the April meeting.

Q.56. You didn't go to the April meeting? A. No, sir.

Q.57. That was at White Sulphur? A. I think either at White Sulphur or Hot Springs that year.

Q.58. You didn't see Mr. Street at that time? A. No, sir.

Q.59. Did you see him prior to that time? A. No, sir.

Q.60. Did you see him after that time? A. No, sir, not to discuss this matter. I may have seen him, but it was never mentioned.

Q.61. Answer my question. Did you see him after that time? A. Oh, I suppose I did, of course.

Q.62. Well, now, of course, this was in March, 1936? A. Yes.

Q.63. And Mr. Street died February 1, 1938, or thereabouts? A. Yes, I suppose I had seen him in the meantime.

Q.64. Almost two years? A. Yes, sir.

Q.65. Didn't you see him a number of times during that two years? A. Well, I may have seen him several times.

Q.66. All right. Now, did he explain it to you at that time? A. No, sir.

Q.67. Did you ask him to explain it? A. I did not.

Q.68. Why didn't you ask him? A. Because this was finished business. That completely passed out of my life.

Q.69. Had you ever gotten an accounting for this money? A. No.

Q.70. Then how can you say it was finished? A. We might have gotten an accounting and I would never get it. It would go right direct to our auditing department. That might have been true, but we didn't, it develops now.

Q.71. But you spent $4,000.00 of your company's money expecting an accounting, and you didn't get it. You didn't personally see it? A. No, sir.

Q.72. And you saw Mr. Street many times and he didn't make any explanation, and you didn't ask him to? A. No, sir, and there is nothing unusual about that at all.

Q.73. All right. Now, just a minute. I showed you Defendants' Exhibit 189. A. What is that, sir?

Q.74. Which is the letter of March 23rd to Mr. Street. A. Yes.

Q.75. You have a copy of it there? A. Yes, sir.

Q.76. I call your attention to the last paragraph of that letter in which you say, "I shall be very much interested in getting more complete information about the transaction when I see you at White Sulphur in April." Now, you were very much interested in getting that information? A. Naturally.

Q.77. And yet you saw him a number of times over a period of two years and you didn't get it? A. Why, no.

Q.78. How can you explain that? A. Well, do you suppose—pardon me, but I don't want to be smart or anything like that.

Q.79. You are not going to offend me. A. But do you suppose a man who is busy and has a good many things on his mind would carry this around in his mind?

The Special Master: That is entirely appropriate. There is nothing smart about that. That is what we are trying to find out. No, that is just what we are trying to find out, is just what you are talking about.

A. It completely passed out of the picture so far as I am concerned. We have a good many things to do besides this Missouri rate case

Q.80. (By Mr. Holman) But you were very much interested in getting the details. A. Of course, I was very much interested.

Q.81. Well, why didn't you get them? A. I don't know that I can make a better answer than I have already done.

Q.82. You say this naturally passed out of your mind? A. Yes, sir.

Q.83. But wasn't this an unusual transaction? A. Well, I don't know that it was.

Q.84. Things of this nature don't happen every day. A. I don't know that it was.

Q.85. In insurance business. A. It wasn't so unusual as to make an impression on my mind that I would carry it around with me and wait for an opportunity to see Mr. Street to ask what it was all about.

The Special Master: How much was your payment?

A. $4,019.00.

Q.86. (By Mr. Holman) That was 5 per cent of your impounded premiums? A. Yes.

Q.87. That was just as much to your company in proportion as the check to them the Home paid? A. Yes, certainly.

Q.88. That was just as important to your company as the contribution of any other company regardless of the smallness of the amount, isn't that true? A. Certainly.

The Special Master: That is true, but it is also true that it was the amount of the payment of a small loss, too, so far as money is concerned.

A. Yes. While we are a small company, $4,000.00 is not a sum to make a deep impression on your mind.

The Special Master: A small loss would run more than that.

A. A small loss would run more any day.

Q.89. (By Mr. Holman) Why didn't you ask him in your letter of March 23rd to send you a letter explaining it, or why didn't you later write him for an explanation? A. Well, I don't know except that I thought I would see him—this is dated March 23rd, the April meeting is usually the second week in April. I don't know when it was this year. I think it was about the 14th or 15th this year, and I thought I would see him in a couple of weeks and get the story.

Q.90. Now, when you didn't see him, why didn't you write him? A. Well, I will tell you why I didn't see him—are you interested in that?

The Special Master: The whole thing. Go ahead.

Q.91. (By Mr. Holman) Just anything you care to tell in explanation. A. I nearly always attend these Western Underwriters Association meetings. I was in the west for many years. I have been east for eleven years. In my office they have a bowling league each winter. Along about the first week in April the bowling league had its annual wind-up and tournament and they served a lunch, and I got hold of a bad hot dog or something and was taken violently ill and was in bed two weeks, and it was nearly a month before I got out of the house. That is why I wasn't at the meeting.

The Special Master: You don't know how I sympathize with you.

Mr. Bullitt: You said you didn't go to the meeting at all?

A. No.

Q.92. (By Mr. Holman) But you were very much interested in getting this explanation at the April meeting and you didn't get it at the April meeting, so why didn't you get it in some other way at some other time? A. Well, I don't know, sir, tht I can answer that any better than as I said a while ago, it just never occurred to me. It was finished business in my mind.

Q.93. That is all you care to say in explanation of it? A. Yes, sir.

Q.94. All right. A. Because it is the absolute truth.

Q.95. Now, you directed the issuance of this check? A. Yes, sir.

Q.96. But you had no idea what it was for? A. Not the slightest.

Q.97. How did you direct your accounting bureau or system? A. Evidently I phoned up. Our voucher

may show that. We use a voucher system all the way through.

Q.98. All right, that is Defendants' Exhibit 187. Is that the same thing that I have here (indicating)? A. Right.

Q.99. Did you prepare that voucher? A. No, sir.

Q.100. Did you direct it to be prepared? A. Evidently I did.

Q.101. That voucher shows that this is charged to "Agents' balance,"— A. Yes, sir.

Q.102. (Continuing) —"Missouri impounding premium account?" A. Yes, sir.

Q.103. Now, why did you tell them to charge it to "Agents' balance"? A. I didn't tell them.

Q.104. Why did they do it, if you know? A. Because it was in line with their regular method of keeping the account, I assume.

Q.105. But you didn't know, nor they didn't know, that it was a matter to be charged against "Agents' balance," did you? A. Let me—may I make a slight explanation here?

The Special Master: Certainly.

A. All of this Missouri impounded premium account, which you will recall had been running over several years—we had a Missouri impounded premium account. That account was the same as an agent's account, an agent at Kansas City or Chicago or anywhere else, the premiums that we impounded were charged to that account.

The Special Master: In other words, you handled them just like you do when you have premiums that have been collected and the home office has never received them, is that what you mean?

A. Not quite that, sir.

The Special Master: All right, explain it a little better, then.

A. We sent these impounded premiums to the custodian, as the Missouri impounded premium accounts. The custodian had not yet demonstrated his right to keep those premiums. We couldn't charge them off so we carried that account as balance due from agents, the custodian being in the light of an agent.

The Special Master: That is what I said. You handled it the same way you would premiums in the hands of a local agent that the home office had never received?

A. That is exactly right.

The Special Master: You treated it as a receipt of the company, but you didn't have it?

A. That is it, the other fellow had it. Now, when we got our payments on this, we credited it.

Mr. Bullitt: You mean the 50 per cent.

A. We credited Missouri impounded—

Mr. Bullitt (Interrupting): The 50 per cent and the 20 per cent?

Mr. Holman: Just a minute.

A. We credited it to the Missouri impounded premium account.

Mr. Holman: I think I am examining the witness, and, of course, the Special Master has a right to do that.

Mr. Bullitt: That is right. You are right. I apologize.

The Special Master: Technically that is right, but—

Mr. Bullitt: I didn't quite grasp what he meant. Go ahead.

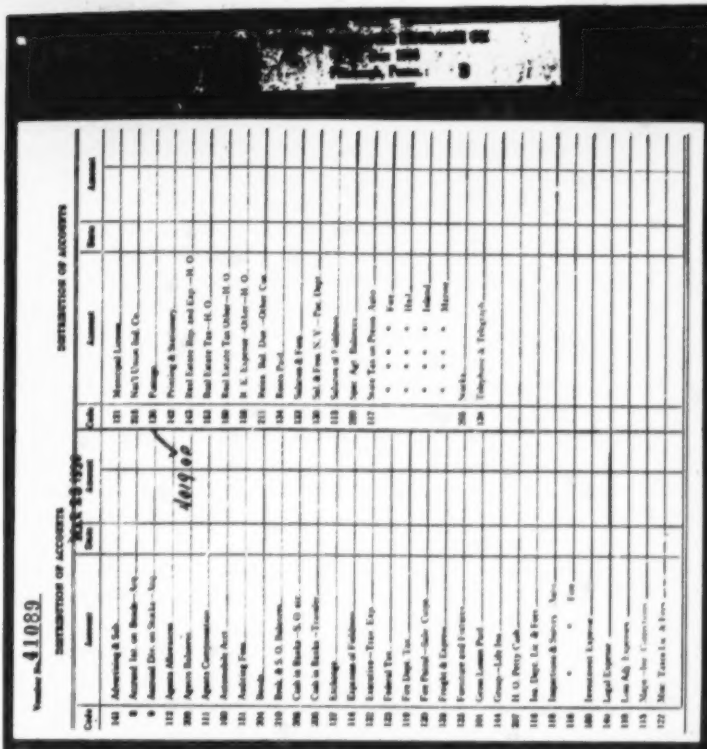
A. That is what this voucher shows.

Q.106. (By Mr. Holman) Now, if I understand, when you paid out money— A. (Interrupting) It is charged to "Agents' balance."

Q.107. When you paid it out of it, you charged it generally rather than specifying the nature of the payment? A. It went to the Missouri impounded premium account, and this voucher—we make a voucher for every disbursement—this voucher showed the why of it.

Q.108. Now, let me call your attention to the fact that on this voucher, which I now offer in evidence, is marked "Rush." A. Yes, sir.

(Said Defendants' Exhibit 187, so offered in evience, having been previously duly marked, is in words and figures as follows:)



Number 41089

DISTRIBUTION OF ACCOUNTS

Date 12-31-1935

Amount 4019.02

Code	Account	Date	Amount
101	Municipal Licenses		
103	Nat'l Union Bld. Co.		
105	Postage		
107	Printing & Stationery		
109	Real Estate Rep. and Exp.—H. O.		
111	Real Estate Tax—H. O.		
113	Real Estate Tax Other—H. O.		
115	R. E. Expense—Other Cos.		
117	Rents Bld. Due —Other Cos.		
119	Rents Paid		
121	Salaries & Fees		
123	Sal. & Fees, N.Y. — Pat. Dept.		
125	Salaries & Liabilities		
127	Spec. Agt. Balances		
129	State Tax on Premiums		
	" " " " Fire		
	" " " " Misc.		
	" " " " Inland		
	" " " " Marine		
131	Taxes		
133	Telephone & Telegraph		

Code	Account	Date	Amount
102	Advertising & Sub.		
104	Annual Stat. on Books—Fire		
106	" " " " —Marine		
108	Annual Div. on Books—Fire		
110	" " " " —Marine		
112	Agents Allowances		
114	Agents Balances		
116	Agents Compensation		
118	Automobile Acct.		
120	Auditing Fees		
122	Bonds		
124	Bank & S. O. Balances		
126	Cash in Banks—S. O. cos.		
128	Cash in Banks—Transfer		
130	Exchange		
132	Expense of Problems		
134	Examiners—Fire Dep.		
136	Federal Tax		
138	Fire Dept. Tax		
140	Fire Patrol—Sub. Comp.		
142	Freight & Express		
144	Furniture and Fixtures		
146	Gross Income Prof.		
148	Group Life Ins.		
150	H. O. Petty Cash		
152	Ins. Dept. Lic. & Fees		
154	Insurance & Surety Tax		
	" " " " Fire		
	" " " " Misc.		
156	Investment Expense		
158	Legal Expense		
160	Loss Adj. Expenses		
162	Misc. Tax Licenses & Fees — — —		

NATIONAL UNION FIRE INSURANCE COMPANY

CHECK REQUISITION

PAYABLE TO C. R. Street, Agent

SEND TO

ADDRESS Chicago, Illinois

5% of Missouri Impounded Premiums as of 9/1/35	40 19 02
D 187	

Charge to Agts. Bal. - Mo. Impd. Premiums Entered Smith

Approved [illegible] Audited [illegible] Date 3-30-36 Passed To Cash Room for Press Items

Q.109. You, I presume, instructed them to rush this? A. I don't know whether I did or not. As a matter of fact, I think around most offices when the head of the office puts an order through, they give it immediate attention. That is the only way I can account for the "rush" on it.

Q.110. Now, Mr. Street didn't request you to rush it, did he? I refer you to his letter. A. No, but his letter was dated March 17th.

Q.111. That is right. A. My reply was dated March 23rd, six days afterwards. The first paragraph of this letter, my letter of March 23rd, will tell you why. May I read it?

Q.112. You may. A. "We have been pretty badly disorganized here in Pittsburg due to the disaster and unprecedented flood conditions"—that was the time of our big flood—"so that your letter of the 17th enclosing a check for $8,874.41, did not reach me until Friday." I don't know what date this is. "We have been without light and heat until this morning, when we are going again"—now, then, we had been six days delayed, and I suppose when I telephoned this up to the cashier's desk or sent it up, being from the head of the office, he would give it immediate attention. This is not my mark; this "rush" business here is not my mark. I don't know who that is.

Q.113. You don't recall— A. I don't know who that is.

Q.114. You don't recall having directed them to rush it— A. (Interrupting) No.

Q.115. (Continuing)—specifically? A. No.

Q.116. All right. You said a minute ago that you didn't question this transaction or this request because it came from Mr. Street, and you understood that he was on the committee and that the committee was handling the matter. A. Yes, sir.

Q.117. All right. Now, in his letter he didn't say that the committee had arranged for this assessment, he said that the arrangement was made with some of the "big boys." Didn't it challenge you as being unusual that the "big boys" were making the arrangements in New York, rather than the committee, all of whom except one lived in Chicago? A. No, frankly, it didn't, knowing Mr. Street as I did.

Q.118. You didn't give this transaction any consideration? A. I am afraid I didn't.

Q.119. Have you told us all you know about the settlement, the matters leading up to the settlement, and the matters subsequent to the settlement of this Missouri litigation? A. Yes, sir, as far as I know.

Q.120. To refresh your memory, didn't you at various times discuss this settlement with other insurance executives? A. No, sir, I don't think I did. If I did it was in a purely casual way. Again, I say it was finished business. The settlement had been made, we couldn't do anything about it.

Q.121. How do you say it was finished when in December, 1937, you got another dividend of 5 per cent, didn't you? A. Well, I mean it was finished so far as the compromise settlement was concerned. I considered that when the court—whatever court it was in—formally assented to the settlement that the settlement was finished business. Now, as to when we got our money, that is purely incidental. We knew we would get it sometime. We had been out of it then for eight or ten years. It didn't make any difference another month or two or five or six months. That is what I mean by not making any particular impression.

Q.122. If it was finished business, why were they making this assessment in March? A. I don't know. That was all a part of the settlement.

Q.123. Then it wasn't finished business. It isn't finished yet, is it? A. I mean finished so far as the terms of the settlement are concerned, the court and all that sort of thing.

Q.124. You haven't to this day gotten an accounting? A. No, sir. I say no. I don't know whether we have or not. I assume not.

Mr. Holman: That is all.

Cross Examination by Mr. Bullitt.

XQ.125. Use a little arithmetic. Reference has been made as to why you didn't charge your mind about asking more about the $4,000.00 you had paid to Street. A. Yes, sir.

XQ.126. In 1936, what were the assets of your company? A. I think $15,000,000.00 or $16,000,000.00. The chart will show over there.

The Special Master: That is good enough.

XQ.127. (By Mr. Bullitt) Then this $4,000.00 that you were paying out was only about two-fifths of one percent of your assets, wasn't it? A. Well, if that is the way it figures.

XQ.128. Just figure it out, a little less than that.

The Special Master: Well, figure it out.

XQ.129. (By Mr. Bullitt) Of course, that is easy enough. What was your total income at that time? A. In 1936?

XQ.130. Yes. A. Our income that year was $7,513,352.00.

XQ.131. And this payment out was only a very small fraction of one percent of your income? A. Yes.

XQ.132. Your losses that year and expenses were how much? A. About $6,450,000.00 in round figures.

XQ.133. So this $4,000.00 that you paid out was only about one-fifth—was only about one-tenth of one percent, wasn't it, about one-tenth of one percent of what you were paying out for losses and expenses, something like that?

Judge Henson: I don't see any need of taking the time for that.

The Special Master: Let's not wait to make the calculations. You can submit the calculation in the argument.

XQ.133½. (By Mr. Bullitt) You, as president of a $15,000,000.00 or $16,000,000.00 company, weren't charging your mind all the time with an expense of about one-tenth or one-hundredth of one percent, is that it? A. Certainly not. If I did I would be crazy in thirty days.

XQ.134. You wouldn't be able to give any attention to the big affairs of your company if you worried yourself all the time about those little items? A. Yes.

XQ.135. Now, did you or your companies, as far as you know, ever ask Mr. Street to do anything for you about this litigation? A. No, sir.

XQ.136. Did you or your company ever ask Mr. Street or authorize Mr. Street or know that Mr. Street had ever used any of this money that you paid back to him to bribe anybody or to get the compromise agreed on with the state officials? A. Never had even the slightest intimation of it.

XQ.137. Until you saw the charges to that effect in the newspapers this spring? A. Yes, sir.

Mr. Bullitt: That is all.

Re-Direct Examination by Mr. Holman.

RDQ.138. General Bullitt brought out the smallness of this payment in proportion to the size of your business. The only difference between running a small business and a large business is the proportion of the size

of the income and disbursements, isn't it? Now, your company doesn't pay out a $4,000.00 fire loss without having a very thorough investigation, do they? A. No, sir.

RDQ.139. They will have a file sometimes a quarter of an inch think or half an inch thick on it, and regardless of the immense size of your company and its assets, if your company adopted a policy of indiscriminately paying out $4,000.00 here and there without investigation, it would soon go broke, wouldn't it? A. It would depend on how many calls were made upon it.

RDQ.140. I said indiscriminately. A. Yes.

RDQ.141. In other words, you have to run your business in a businesslike way regardless of the size of it. A. Well, sir, we assumed then and we still assume when a committee representing 130 odd companies is involved in litigation, handling a case where no individual can ever hope to keep track of it, we will do just what that committee requests us to do.

RDQ.142. I understand that. My question was because of the fact he brought out this was such a small amount of money.

The Special Master: I don't think you caught the purport of General Bullitt's question. He only asked that because it was drawn out by your asking why he didn't keep it on his mind and keep at Mr. Street until he got the explanation, and he said because he didn't carry it on his mind.

Mr. Holman: I understood that.

A. That is it precisely.

Mr. Holman: But he nevertheless did not believe in making an investigation or finding out what it was for at some later date, at any rate. That is my position.

A. You know, that is the reason we have suspense files in our office, to call things to mind.

RDQ.143. (By Mr. Holman) But this was never called to your mind again, apparently? A. No, sir.

RDQ.144. Why didn't you put it on the suspense account? A. No occasion.

RDQ.145. Until you found out? A. No occasion.

RDQ.146. You didn't know what it was for, did you? A. We didn't know what it was for, but we knew it was chargeable to Missouri impounded premiums and assumed, as we have always in the past, that in due time we would get a regular account of it like all committee matters are handled.

Mr. Holman: That is all.

Re-Cross Examination by Mr. Bullitt.

RXQ.147. That custodian's account hasn't been closed up until this day? A. It is still open as far as I know.

(Witness excused.)

WILLIAM C. DENT, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. Mr. Dent, what is your position with the Potomac Insurance Company? A. I am assistant secretary in charge of underwriting.

Q.2. Was that your position in the years 1935 and 1936? A. That is correct.

Q.3. What was the position of Mr. Moore, your Mr. Moore? A. Mr. Moore is vice-president and general manager.

The Special Master: Which was Mr. Moore?

Judge Henson: He testified here yesterday, I believe.

The Special Master: Yes, all right. Go ahead.

Q.4. (By Judge Henson) Directing your attention, Mr. Dent, to the payment by your company of $2,450.74 March 24, 1936, in doing which I call your attention to the Defendants' Exhibit 117, and will ask you if that is a check representing a payment of five percent of your impoundments up to May 1, 1935. A. That is correct.

Q.5. For your company? A. Right.

Q.6. Now, will you state the circumstances under which the check was issued? A. Mr. Moore was away at the time and Mr. Haid called and said he wanted this money for general expenses.

Q.7. You mean he made a personal call? A. He made a personal call, called to see Mr. Moore, I suppose, and he was out and I talked to him.

Q.8. Your company is domiciled in the City of New York, isn't it? A. The City of Philadelphia.

Q.9. Then Mr. Haid lives in New York, doesn't he? A. Mr. Haid does?

Q.10. Yes. A. I don't know. I suppose he does.

Q.11. Well, at least his office is here? A. Yes.

Q.12. Now, he called on you in Philadelphia? A. That is correct.

Q.13. What was the conversation you had with

Mr. Haid? A. Mr. Haid said they needed this money for legal expenses.

Q.14. Is that all he said? A. That is about all he said, yes.

Q.15. What did you say? A. I asked him what it was for. We talked about it and he said that he needed it in connection with this Missouri impounding affair.

Q.16. That he needed it? A. No, that—

Q.17. (Interrupting) The Actuarial Committee? A. The Missouri committee, yes.

Q.18. I show you Defendants' Exhibit 118 and ask you who made this memorandum. A. I made that memorandum.

Q.19. Did you make the upper portion down to the figures $350,000.00 or the lower portion below this calculation or all of it? A. I made this (indicating).

Q.20. By "that" you mean you made this part of it (indicating)? A. Wait a minute. These are my initials. These look like my figures, and this looks like mine, but that (indicating) isn't mine.

Q.21. Well, is this upper part Mr. Haid's? A. I think so, yes. That is not my writing.

Q.22. Did you put your initials here to this portion (indicating)? A. That is right.

The Special Master: That has been introduced in evidence?

Judge Henson: Yes, sir.

Q.23. (By Judge Henson) Now, did Mr. Haid bring this memorandum with him or did he prepare it there in your office? A. I think he prepared it in the office.

Q.24. You think he prepared it there? A. Yes.

Q.25. Why was this memorandum prepared, if you know? A. Simply because I signed the check in the absence of Mr. Moore and I wanted some information about it.

Q.26. You wanted something for your files to show what it was? A. Right.

Q.27. Now, Mr. Dent, this first dozen lines of that refers to the court order of distribution that was made in this case involving your impoundments which was 50 per cent direct to the companies? A. Yes.

Q.28. To be handed to you in bonds as near as bonds would make it, 20 per cent to go to the policyholders to be paid out by the custodian, you so understood it, 30 per cent to C. R. Street and R. J. Folonie as trustees to pay state's expenses and state's attorneys, to— A. (In-

terrupting) To pay—and it looks like "to pay Insurance Department."

Q.29. Yes, to pay Insurance Department, to pay attorneys for the companies. A. Yes.

Q.30. That memorandum gave you the information that 30 per cent of your impoundment was held by Street and Folonie as trustees out of which they were to pay the expenses of the lawyers on both sides and all expenses of this litigation, didn't it, and you so understood it at that time? A. I am not sure that I understood that at that time.

Q.31. Well, it was written right there by him and you looked at it? A. Yes.

Q.32. You O.K.'d it down here (indicating)? A. Yes.

Q.33. Now, the words in the middle of this say "$350,000.00 to be collected. $275,000.00 paid to date." What did you understand that to be? A. I understood that that was the amount of money that was required for the expenses, $275,000.00 had been paid up to that date.

Q.34. Isn't it a fact that he told you that he was getting 5 per cent from all of the companies, and wanted 5 per cent from your company of your impoundments? A. I think so.

Q.35. Which altogether would make substantially $350,000.00? A. That is right.

Q.36. That is what was needed? A. That is right.

Q.37. And that up to that time, which was March 24, 1936, $275,000.00 had been paid? A. That is right.

Q.38. Now, can you read this part which I believe you say you put in there, just below that memo? A. This says something of Mr. Haid's visit.

Q.39. Is it the account? A. I don't know whose writing that is there (indicating). It is no one in our office.

Q.40. Anyhow, Mr. Haid's visit, and you O. K.'d it? A. That is right.

Q.41. Now, then, you had the information that there was 30 per cent of your impoundments set out for legal expenses, both state and your own companies, the insurance companies, and that that was available for expenses. Now, did he at that time bring you a 11 per cent check from the trustees, 11 per cent of your impoundments paid out by the trustees? Didn't he bring a 11 per cent check along with him? A. I think so.

I have been away from the office and I haven't been back.

The Special Master: Judge, you make a statement and you don't wait for him to answer.

A. Have you got that information here?

The Special Master: He practically hasn't given any testimony at all. You have been talking and he hasn't been answering you.

Judge Henson: I saw my vice in that one instance.

Q.42. (By Judge Henson) Now, Mr. Dent, state whether or not a 11 per cent check from Street and Folonie as trustees was brought to you at that time. A. I don't recall. I haven't been back to the office. I have been on my vacation.

Q.43. Do you have any memory now about that? A. I don't recall having received a check at that time.

Q.44. Do you remember ever getting a check for 11 per cent from Street and Folonie? A. No, I don't, personally. I didn't see it, unless the accountant got it, unless Mr. Moore saw it.

Q.45. I will ask you whether or not it is your understanding that they were collecting $350,000.00 from these companies in addition to the 30 per cent that was set out. A. No, the 30 per cent is not clear in my mind. This is the information I took down on the day Mr. Haid called and said he was collecting $350,000.00.

Q.46. Then I want to know definitely whether you understood he was collecting $350,000.00 and that he had $275,000.00 already collected, if that was for expenses in addition to that that is set out in the 11 per cent—in the 30 per cent fund. A. I don't recall that.

Q.47. You don't recall it? A. No.

Q.48. Is there any explanation you can give as to these figures "$350,000.00 to be collected and $275,000.00 has been paid to date," any more than you have already given us? A. No.

Q.49. Now, he was calling on you for a check for 5 per cent? A. That is right.

Q.50. So, of course, you knew that wasn't coming out of the 30 per cent. He was calling on your company to contribute 5 per cent of its impoundments. A. I knew that Mr. Street was the chairman of the committee and I had a very high regard for Mr. Street and Mr. Haid, and consequently I didn't question him very closely. I simply knew we were in safe hands, and I gave Mr. Haid the check and kept this memorandum.

Q.51. Now, who made the requisition? I am calling your attention to Defendants' Exhibit 119. A. I made the requisition and signed it and these requisitions in our office are held. Every requisition that I sign during the absence of Mr. Moore is initialed by him, as you see here.

Q.52. What—you have initialed this requisition? A. Yes.

Q.53. What did you state the purpose of that payout to be? A. Legal expenses.

Q.54. What does this mean "general legal expenses in connection with Missouri"? A. That is right.

Q.55. What did you mean by the term "general legal expenses"? A. Oh, I don't know that we meant anything in particular about that. We hadn't any reason to make it "general." We could have just said "legal expenses."

Q.56. State whether or not Mr. Haid on that occasion told you that this was a special occasion of rating, some special expenses? A. No, I don't think so.

Q.57. You don't think he did? A. No.

Q.58. Did he tell you then it was for general expenses? A. I don't recall that.

Q.59. How did you account for putting it in there "general expenses"?

Mr. Bullitt: He didn't put it. "General legal expenses" he put it.

Q.60. (By Judge Henson) Well, general legal expenses. A. I don't know unless sometimes our accountant who makes the checks out might have made it that way and I thought it was all right and signed it, just to allocate the expense in some way on the company's books.

Q.61. Well, then did you or did you not direct the use of these words as the purpose in the requisition "general legal expense" in connection with the Missouri impounding? A. As a purpose.

Q.62. Well, I say, did you direct that or didn't you to be put in the requisition? A. Well, the accountant may have asked me how to, what way we should have charged it, and I probably said "general legal expenses."

The Special Master: I am trying to follow you, but if he thought it was legal expense, what is there peculiar about calling it a general legal expense?

Judge Henson: General legal expense would include all of the expenses that are specified in the 30 per cent.

The Special Master: I understand.

Judge Henson: Some of the witnesses have testified this is a special.

The Special Master: Yes, I understand, but what I am trying to get is this: If he just thought it was expenses of litigation, and he used the word "general," that wouldn't really require any explanation. A man could do that just as well as not. He wasn't drawing a legal instrument. He tells you he didn't really know what it was for.

Judge Henson: I probably ought to be satisfied with that. You are conducting the hearing. I thought there was some significance in it being "general legal expense" because that term is broad enough, you might as well say "all."

The Special Master: That is a legalistic view.

A. Yes.

The Special Master: And you are not talking to a lawyer, that is the trouble with that.

Judge Henson: All right.

The Special Master: I don't know whether it is a sound legal distinction, but certainly it wouldn't be a distinction that would occur to a man just handling a transaction over the desk.

Judge Henson: As I recall it, this is the only one that is given so general as to include all of the 30 per cent, while other witnesses have testified that this is a special, or they thought it was special.

The Special Master: Well, I know.

Mr. Bullitt: Who ever said that? I don't remember that.

The Special Master: We are trying to connect it up with this man's explanation of what he told them it was, and he told them to make an entry. Now, what happened in some other office wouldn't—personally, I don't see any significance of it.

Judge Henson: If the Master thinks that, I don't care to pursue it any further.

A. In the breakdown of expenses, wouldn't that be general expense.

Judge Henson: Well, my idea of general expense is that you could include all of those that the 30 per cent is to cover.

A. Well, that is more or less general.

The Special Master: It looks to me if he says it is general, as distinguished from specific, and he didn't even know what the—

Mr. Bullitt (Interrupting): That was expense in that suit of a legal nature, that is all I can see in it.

Q.63. (By Judge Henson) Anyway, this check was made to C. R. Street, Agent. Was any explanation given as to why your check should be made that way? A. No.

Judge Henson: I believe that is all.

Cross Examination by Mr. Bullitt.

XQ.64. You knew that the 11 per cent that you got back from Street and Folonie was a part of the 30 per cent held by them for legal expenses, and other expenses of the litigation? A. Yes.

XQ.65. And this 5 per cent that you paid back to him came out of that 11 per cent? A. That is correct.

XQ.66. So that the 5 per cent that you paid back to Mr. Street was paid on account of the legal expenses?

Judge Henson: I object to that as a conclusion.

A. Yes.

The Special Master: No, he is asking him what he thought. We are trying to find out what these people think so far as what happened is concerned, there is no question about it. We are on an inquiry search of these people's minds. That is really all there is here before us.

XQ.67. (By Mr. Bullitt) At the time you paid that money, gave that check back to Mr. Street out of the 11 per cent, that was under the compromise to be devoted to legal expenses, what did you think in your mind Mr. Street wanted that money for? A. You mean the 11 per cent?

XQ.68. No, the 5 per cent that you paid back. A. Well, legal expenses.

XQ.69. That was what was in your mind? A. Yes, that is true.

XQ.70. Did you have in your mind at that time or did anybody in your company have in their mind that you were then or at any time authorizing Mr. Street or expected Mr. Street to use that money or any part of it for bribery or to in some way influence a public official or anybody else to agree to the compromise? A. Absolutely not. There was no such understanding.

Mr. Bullitt: That is all I want to ask him.

(Witness excused.)

SHELDON CATLIN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Where do you reside, Mr. Catlin? A. Philadelphia.

Q.2. What is your connection with the Insurance Company of North America group? A. Vice-president.

Q.3. Were you vice-president during the years of 1935 and 1936? A. Yes, sir.

Q.4. That group consisted of the Insurance Company of North America, the Alliance Insurance Company, the National Security and the Philadelphia Fire and Marine? A. Right.

Q.5. Did the Actuarial—

The Special Master: Is this the group for which Mr. Street was the Western Manager?

Senator Hollingsworth: No, that was the Great American.

Q.6. (By Senator Hollingsworth) Did the Actuarial Committee have charge of this litigation for your company as well as the other companies? A. I understand so, yes.

Q.7. That has been your understanding all the time, hasn't it? A. Yes.

Q.8. You knew that Charles R. Street was, in fact, the man who had active charge of the litigation? A. That is true.

Q.9. And it was entrusted to him with your knowledge and consent? A. Yes.

Q.10. Now, in May of 1935, apparently you had some $261,700.00, in round numbers, of impounded premiums in your group? A. I don't know what the figure was.

Q.11. Well, can you refresh your recollection? A. I should explain that our company has a real Western Department with full jurisdiction of all of the midwestern cost.

Q.12. Who is in charge? A. Mr. Robertson now, since about March, '36. Before that Mr. Tuttle. So I will have to explain that my ignorance of a lot of this is due to the fact that we have a Western manager who handled all this thing and no longer has—

The Special Master: Mr. Tuttle?

A. He has retired.

The Special Master: I remember him very well.

Q.13. (By Senator Hollingsworth) You do know that the compromise was effected in the year 1935? A. No, I did not.

Q.14. You didn't know that? A. No.

Q.15. You didn't know anything the status of the case? A. No.

Q.16. And that was true in 1936? A. Yes, true always. I never was in touch with it whatever.

Q.17. Yet Mr. Haid called on you on March 24, 1936, and delivered you a check, didn't he? A. Yes, sir.

Q.18. And demanded of you a check for 5 per cent of the impounded premiums in this company?

Mr. Bullitt: I am bound to object to that, "called on him and demanded." He can ask him what happened.

The Special Master: Yes.

Senator Hollingsworth: Well, all right.

Q.19. (By Senator Hollingsworth) He received from you a check for 5 per cent of the impounded premiums? A. He received from me certain checks that are listed here in my letter of March 24th, which I suppose you have.

Q.20. Checks for your various companies aggregating 5 per cent of the impounded premiums? A. I understood so. Of course, I knew at the time.

Q.21. And that amount was $13,086.22, was the aggregate amount of those checks? A. Well, it isn't added up in my letter here.

Q.22. All right. At that time you didn't know anything about the status of this litigation? A. I did not.

Q.23. Did Mr. Haid explain it to you in any way or manner? A. No.

Q.24. He never explained it to you and you didn't know anything about it? A. He came into my office personally.

Q.25. Please, will you answer this: He didn't explain it to you and you didn't know anything about it? A. Not that I recall, no. I wouldn't have understood it anyway.

Q.26. You wouldn't have understood it anyway? A. No, I had not been in touch with it whatever.

Q.27. All right, when he came to your office he handed you a check, or checks? A. Four checks.

Q.28. Four checks for the four companies? A. Yes.

Q.29. And they aggregated 11 per cent of the impounded premiums. Did you know that much about it? A. I did not.

Q.30. You didn't know even that? A. I may have been told that, but that is three years ago.

Q.31. You have no recollection of being told that? A. No.

Q.32. When he handed you that, what did he say to you? A. He said he would like to have me hand him these four checks.

Q.33. Is that all that he said? A. I don't recall all he said, but apparently he told me it was for legal expense in connection with this case because that is the way we charged it on the books.

Q.34. Now, you have no recollection of his telling you that? A. It was legal expense?

Q.35. Yes. A. No. I would assume that he must have because that is the way we charged it.

Q.36. Did you issue a voucher or requisition? A. I authorized the checks personally.

Q.37. You authorized them personally? A. Yes, I authorized our accounting department to draw these checks and I signed a couple of them myself.

Q.38. Do you generally use a requisition in your office for checks? A. Oh, I suppose so.

Q.39. Don't you know? A. Well, I don't know a lot of detail in our office.

Q.40. You don't know whether you have in effect in your office a system whereby requisitions are generally executed for checks? A. Oh, yes, of course, there must be.

Q.41. All right. Why didn't you follow your usual routine in this case?

Mr. Bullitt: He didn't say—I object to that, it assumes they didn't follow it. I think they did follow it.

The Special Master: Let's see if they did.

Senator Hollingsworth: He said he didn't, personally.

The Special Master: Ask him if he did issue a requisition.

A. Did I what?

Q.42. (By Senator Hollingsworth) Did you issue a requisition or cause one to be issued? A. I don't know, apparently there is no such thing in here. We gave you all our—

Mr. Bullitt (Interrupting): Are you talking about the disbursement voucher, is that what you mean?

The Special Master: Let him answer the question. You can cross examine him, Mr. Bullitt.

Mr. Bullitt: This isn't the same.

A. That is our file.

Mr. Bullitt: Give him the file we have here.

Senator Hollingsworth: I will give him what I please, Mr. Bullitt.

The Special Master: Yes, just wait. He is asking a perfectly proper question.

Q.43. (By Senator Hollingsworth) Did you follow your usual routine in this case?

Mr. Bullitt: If your Honor please, just wait a minute. He isn't showing the witness the paper that he furnished to him, that the witness furnished heretofore.

The Special Master: All right.

Mr. Bullitt: At least he ought to ask him what was done.

The Special Master: Are you objecting or not?

Mr. Bullitt: I am objecting on the ground that he is calling for the conclusion of the witness instead of asking for a statement of facts.

The Special Master: The objection is overruled.

Mr. Bullitt: All right.

Q.44. (By Senator Hollingsworth) Answer the question, please, sir. A. What is the question again?

Senator Hollingsworth: Read it, please. (Question read.)

The Special Master: That has reference to issuing of vouchers?

A. I don't think that we did, because this is unusual for the vice-president to be called for a check to be issued right there and then, and to be handed over to a man who was there in person, and I don't know what sort of a requisition I made. Of course, I authorized the drawing of these checks or they wouldn't have been drawn.

Q.45. It was an unusual procedure? A. From then on the bookkeepers handled it. I paid no attention to it.

Q.46. It was an unusual procedure for you to call for a check personally, is that right? A. Oh, yes, rather out of the ordinary for a man—

Q.47. (Interrupting) Mr. Haid had called personally at your office, had he? A. Yes.

Q.48. Did he have any purpose other than to deliver the check of 11 per cent and receive a check of 5 per cent from you? A. Not that I know of. Not that I recall.

Q.49. That is all that you recall at this time? A. That is all that I recall, yes.

Q.50. Has he been in the habit of calling at your office for checks? A. No.

Q.51. Did he ever call at your office for a check before? A. Not to my knowledge.

Q.52. Has he ever called at your office before? A. Oh, yes, we are old friends.

Q.53. Just for a personal call? A. Yes, mostly, usually.

Q.54. Did he ever call for a business transaction before? A. No, not that I can recall. I don't know.

Q.55. Did he tell you why he had made the personal call for this check? A. I don't remember that. I assume that he was in Philadelphia, that there was some hurry about it and he was collecting from all of the Philadelphia companies and saving a day. I suppose, but I don't remember any particular explanation of why he called in person.

Q.56. He didn't come then for the purpose of making an explanation of the check and the urgent need of it? A. No, I don't think so.

Q.57. And didn't give you any explanation? A. I don't recall any except legal expense in the Missouri case, of course.

Q.58. For the Missouri case? A. Oh, yes.

Q.59. Why did you attend to the matter instead of having your Western Department attend to it? A. Because Mr. Haid was there asking for the checks.

Q.60. Your Western Department, as I understood you to say, had been in active charge of the case? A. Oh, yes, we were not familiar with it.

Q.61. You knew nothing about it at all? A. Nothing about the detail, no.

Q.62. You didn't have any idea or conception whether this check was fair or just or not, did you? A. I certainly had a very strong conception that it was fair because I was dealing with men I knew.

Q.63. Did you know whether Mr. Haid had ever had anything to do with this case before? A. I don't know as I knew that. I don't know.

Q.64. You knew it had been handled through the Actuarial Committee? A. Yes.

Q.65. And the Actuarial Committee had been in contact with your Western Department? A. That is right.

Q.66. And not with you? A. That is right.

Q.67. Didn't it seem most strange that Mr. Haid, whom you had never heard of having any connection with the case, would make a personal call on you and request checks aggregating $13,000.00 and not make some explanation to you as to why he was coming direct to you? A. I admit that is unusual.

Q.68. That is most unusual? A. It was out of the ordinary.

Q.69. And did you purposely refrain from asking him what it was all about? A. Oh, no, I did not.

Q.70. Why didn't you ask him what it was all about? A. Well, I am like a lot of other witnesses, this case was so involved that I had gotten sick of it and here was a call for some additional expense to wind it up and I assumed that it was perfectly all right, and was glad to get rid of it. I don't believe Mr. Haid was in my office but a very few minutes.

Q.71. The very fact that it was so involved and you knew nothing about it, wouldn't that be the very thing that would impel you to at least say "what is it all about"? A. Well, it would seem natural, but this is over three years ago and it was just a conversation and, of course, I was told it was legal expense or I wouldn't have charged it that way.

Q.72. It wouldn't be any more unnatural now than it was. In other words, the three years doesn't make it more unnatural. A. I dismissed it, never gave it a thought for years.

Q.73. Did Mr. Haid tell you it was necessary to have this money in connection with the compromise? A. I don't recall that.

Q.74. Sir? A. I don't know.

Q.75. Well, he told you something about the compromise, didn't he? A. I don't know.

Q.76. Do you have any recollection? A. No, I have no recollection of any discussion.

Q.77. Well, he did tell you, as I understood you a while ago, that it was necessary to have this to get rid of the case. A. Well, I don't know as to that. I will change that.

Q.78. What was said about getting rid of the case? A. I don't know. That is my own impression, I don't know.

Q.79. You said you were getting rid of it? A. Well, that is just an offhand remark.

Q.80. Did you intend to say that? A. I don't know about that.

Q.81. Did you think at the time you gave that check that this closed the matter? A. I don't think so. I don't know.

Q.82. Don't you have any recollection? A. No.

Q.83. You didn't know whether the case had been closed, did you? A. No, I am not familiar with it at all.

Q.84. You didn't know the status of the case? A. No.

Q.85. You didn't know anything about the extent of attorneys' fees? A. No, I did not.

Q.86. Did you know the other companies were called upon to make a contribution of 5 per cent of the impounded premiums? A. I don't know.

Q.87. You didn't know whether you were the only company that was called upon to pay attorneys' fees? A. I don't remember being informed that everybody else was being called on.

Q.88. You didn't know that? A. I don't suppose I did.

Q.89. It never entered your mind? A. It may sound queer, but that is about the fact, though.

Q.90. It never entered your mind whether this was a special fee for your case or whether it was a fee common to all of the companies? A. No, I would assume that it was simply our proportion of some fund. I would assume that, I suppose.

Q.91. Did you know how much impounded premiums you had? A. I don't recall knowing it was 5 per cent of any certain amount.

Q.92. How did you get the exact amounts? A. Mr. Haid called for these checks.

Q.93. Did he have a memorandum? A. I don't, for the moment, know. I don't remember.

Q.94. These checks are for odd amounts and odd cents? A. Yes.

Q.95. You know now that each one figured 5 per cent of your impounded premiums, do you not? A. I understand, yes.

Q.96. Did you get that information from Mr. Haid at that time? A. I don't know. I keep saying I haven't been in touch with this case before or since, this is my only contact with it.

Q.97. That is the strange thing, if you didn't know anything, you weren't even generally informed concerning the case, why did you put out $13,000.00 without some explanation? A. Because it was asked for by a man we completely trust.

Q.98. If the man had given you information that would be true, but if he didn't give you any information, weren't you naturally impelled to ask him? A. Well, I don't know what I asked him. I have no recollection what I asked him or what he told me.

The Special Master: Mr. Tuttle, your Western Manager, was a man very prominent in the insurance world at that time, wasn't he?

A. Oh, yes.

The Special Master: Was considered as an outstanding man in the insurance world?

A. Oh, yes.

The Special Master: You knew that this rate litigation was in his Western Department?

A. Oh, yes, of course, I knew about it for years in a general way.

The Special Master: And you knew that however it came out affected his Western Department, both as to the rates and to everything else?

A. Oh, yes.

The Special Master: Because it was in Missouri?

A. Oh, yes.

The Special Master: And up to that time you had never been called upon to give the Missouri rate case the slightest attention?

A. No.

The Special Master: And that was due to the fact that Mr. Tuttle was really running the thing out in his department?

A. Our managers really run their departments.

The Special Master: That is right. Didn't it occur to you that somebody was going over Mr. Tuttle's head in that matter in coming to you with that when they had always come to him before?

A. Well, yes.

The Special Master: Didn't it occur to you that maybe you owed it to Mr. Tuttle to ask him about that?

A. Oh, our accountants immediately informed him and transferred these credits and debits to the Western books.

The Special Master: Yes, after it had been done and after it had been passed on, and he had no chance to say anything about it.

A. It happened at that time it was just the interim period when Mr. Tuttle was retiring and Mr. Robertson was taking his place.

The Special Master: Oh, well, that makes a difference.

Mr. Bullitt: What did he say?

The Special Master: It happened right at the interim when Mr. Tuttle was retiring and Mr. Robertson was taking his place.

A. I haven't checked up, but I think it was that May.

The Special Master: Well, that may make a difference, but it might look funny that all of the time you would go over the head of as able and prominent a man.

A. That is correct. I wouldn't ordinarily do that, but Mr. Haid was sitting there in person, and through trusting Mr. Haid and knowing him for forty years intimately—

Q.99. (By Senator Hollingsworth) Did you ask Mr. Haid why he hadn't gone to the Western Department? A. I don't think so.

Q.100. Did it occur to you he should have? A. He should have if he had the time.

Q.101. What gave you the impression it was so urgent? A. Yes, sir.

(Whereupon, discussion was had off the record.)

Q.102. (By Senator Hollingsworth) Now, before having this marked, I want to ask you if that is your form of requisition, disbursement voucher? A. Well, I presume it is. It certainly is.

Senator Hollingsworth: All right, I want to identify—

A. (Interrupting) I don't think I have seen one for a long time until this date.

Senator Hollingsworth: I want to have it identified.

(Said voucher, handed to the reporter, was marked for identification as "Defendants' Exhibit 190, EFM.")

Q.103. (By Senator Hollingsworth) I hand you Defendants' Exhibit 190, which I offer in evidence, and ask you to state if that is your form of requisition, it is called a "Disbursement Voucher." A. I will say so, yes.

Q.104. Sir? A. Yes.

(Said Defendants' Exhibit 190, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

DISBURSEMENT VOUCHER

INSURANCE COMPANY OF NORTH AMERICA 95

NO. _____

CASHIER:

DATE

CHECK | TO FROM L. R. Street Agt

CONT. 0 | $ 190.3 39

FOR Missouri Returns

REMARKS:

PREPARED BY _____ APPROVED _____ CONTROLLER _____

	Account	Fire	Auto	Marine		(1-2) Co. Party			(14-16) Office Party		(17) No. of Acct.	
									DEBIT		CREDIT	
						Company's Charged 21-23	Date Acct. 25-26	Agent's Acct. 26-27	Office Charged 29-30	Bank 31-32	Dept. 33-34	Ledger Account 34-36	Check 39-40	AMOUNT 41-46	Check 39-40	AMOUNT 41-46
	Investments												0		X	
	Interest Accrued												0		X	
	Exchange												0		X	
30	Miscellaneous												0		X	
33	Real Est. Exp. A Rep. & Exp.												0		X	
	" " " B Taxes												0		X	
	Claims vs. Reinsurers												0		X	
	Losses												0		X	
	Salvage												0		X	
	Loss & Fire	190.3 39											0		X	
													0		X	
15	Loss Adj. Expense												0		X	
	Loss Dept. Exp.												0		X	
16	Commission												0		X	
	Contingent Com.												0		X	
17	Agents Allowances												0		X	
18A	Field Men—Salaries												0		X	
B	" " —Expenses												0		X	
C	Executive Traveling												0		X	
19	Salaries and Fees												0		X	
20	Rents												0		X	
21	General Office Maint.												0		X	
22	Furniture and Fixtures												0		X	
23	Mags Ins. Corrections												0		X	
24	Inspections and Surveys												0		X	
25A	State Tax on Premiums												0		X	
B	Insurance Departments												0		X	
C	Other State Taxes												0		X	
D	Federal Taxes												0		X	
E	Fire Department												0		X	
F	Fire Patrol & Salvage Corps.												0		X	
G	All Other except on Real Estate												0		X	
26	Postage, Telegr'ms, Express, Etc.												0		X	
27	Leg. Exp. ons. Exp. on Losses												0		X	
28	Advertising and Subscriptions												0		X	
29	Printing and Stationery												0		X	
30	Donations												0		X	
31	Agents Bals. Chgd. Off												0		X	
	TOTAL															

CHECK NO. 25152 BANK PHILADELPHIA NATIONAL BANK

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Q.105. I notice that is dated March 24, 1936. A. Yes.

Senator Hollingsworth: I find similar ones through here.

(Disbursement voucher, handed to the reporter, was marked for identification as "Defendants' Exhibit 191, EFM.")

Q.106. (By Senator Hollingsworth) I now hand you Defendants' Exhibit 191, which I offer in evidence, dated March 24, 1936, for $8,903.39. Was that the check that was issued pursuant to this disbursement voucher? A. That is right, yes.

(Said Defendants' Exhibit 191, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

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INSURANCE COMPANY OF NORTH AMERICA
INSURANCE BUILDING
PHILADELPHIA, PA.

No. 25852

MAR. 24TH, 1936

PAY EIGHT THOUSAND NINE HUNDRED THREE AND 39/100 ** DOLLARS $ 8903.39/100

IN PAYMENT OF MISSOURI RATE CASE

TO THE ORDER OF

C. R. STREET, ACT.

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

THE PHILADELPHIA NATIONAL BANK 3-1
PHILADELPHIA, PENNA.

Agent

FOR DEPOSIT WITH CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

PHILA. CLEARING HOUSE
MAR 26 1936
11 M

ENDORSEMENT

Q.107. You ordered this disbursement voucher? A. Yes.

Q.108. Now, at that time, did you mark on the voucher or tell the man what this check was for? A. Well, I suppose I did. I don't recall.

Q.109. Is it on there? A. It says "General fire" here.

Q.110. It says "General fire"? A. That is a temporary entry.

Q.111. $8,903.39? A. I didn't know it was entered that way until this.

Q.112. But the man who issued that, who actually wrote it, got his information from you? A. Oh, yes.

Q.113. That is the only place he could have gotten it, wasn't it? A. Oh, yes.

Q.114. Now, you didn't say anything to him about legal expenses, did you? A. Of course I did, certainly, because he transmitted this to the Western books.

Q.115. We will get that later. A. This must have been a temporary entry that—we didn't total this money, you see.

Q.116. Now, your "General fire, $8,903.39," you meant that to be charged in an account that you carry on your books as "General fire expense"? A. I assume so.

Q.117. What does the "General fire"— A. (Interrupting) I didn't authorize it to be charged to "General fire."

Q.118. How did it get on there, then? A. I don't know except, as I say, it was temporary. We transmitted what we received to Chicago and debited it to Chicago.

Q.119. I know, but do you generally make a temporary entry—

Mr. Bullitt: General, that is where it is.

Senator Hollingsworth: I know where it is carried, general.

Q.120. (By Senator Hollingsworth) In making a general—in making a temporary entry, if you know it is legal fees don't you say it is legal fees, even though it is temporary? A. I had nothing to do with these items here (indicating). I don't know.

Q.121. Would the item of legal fees be properly located under the account of "General fire"? A. No.

Q.122. Then can you explain why an item for legal fees has a temporary entry of "General fire" which

wouldn't properly carry the item of legal fees? A. You will have to call our comptroller for these items.

Q.123. Well, the comptroller got his information from you, did— A. (Interrupting) Just to draw the check and charge it to legal expense.

Q.124. Can you explain why it was that your comptroller got instructions from you to issue a check for legal fees and charge it for legal fees and then made an entry on the requisition "General fire"? A. I don't know.

Q.125. You don't know and have no explanation to make? A. No.

The Special Master: I don't believe he would be called on to make the explanation. He is called to make the explanation of what he told.

A. These are Western Department items. That was backed in and backed out of our home office.

The Special Master: Yes, he says he didn't authorize it to be charged to General fire. I think that is the end of it.

A. When I say "temporary," I mean it goes on the book and off. It is a Western item.

Q.126. (By Senator Hollingsworth) I will ask you this: Can you explain why your records of your company show that inconsistency? A. No, I can't. I know nothing whatever about it, never saw any of these items before.

(Ledger sheet, handed to the reporter, was marked for identification as "Defendants' Exhibit 192, EFM.")

Q.127. (By Senator Hollingsworth) I show you Defendants' 192, which appears to be a book of account called "Cash Disbursements." Do you put temporary entrys on that? A. I don't know.

Q.128. You recognize that as a sheet from your records, don't you? A. I suppose it is. I never saw it.

Senator Hollingsworth: That is Defendants' Exhibit 192, which I offer in evidence.

(Which said Defendants' Exhibit 192, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Defendants' Exhibit No. D 192 is page from cash book of ALLIANCE INSURANCE COMPANY OF PHILADELPHIA showing entry, among others, on March 24, 1936, check payable to C. R. Street, Agent, Missouri Rate Case No. 1218, amount $1,077.43, credited to Corn Exchange Bank and charged to General Accounts Fire.

Q.129. (By Senator Hollingsworth) Now, I call your attention to the entry here. A. Here (indicating) is the one.

Q.130. "C. R. Street, Agent," under the heading "Particulars," "Missouri rate case, Voucher 403, Check No. 1218." This evidently is your bank upon which it was drawn, "Corn Exchange, $1,077.43." Over here under "General accounts" it is put under "Fire." A. Fire business, of course.

Q.131. Sir? A. It is a fire case, of course.

Q.132. All right.

The Special Master: Well, of course, and in fact, it wasn't. It was fire and windstorm and inland marine, I believe.

A. I don't know that.

The Special Master: It seems to me, Mr. Hollingsworth, that after this man tells you what he did to authorize the check, what he told the person that he told to write the check, and on what information he acted, then in the absence of any evidence that he keeps the books, why, he has told about all he can. I wouldn't pay much attention to what he said about—

A. (Interrupting) You can call our comptroller.

The Special Master: (Continuing)—what was done there on the books. He has told what he knows. If he tells what he knows about it, from then on it is up to the person that made the entries.

Senator Hollingsworth: I don't think I should be required to assume that he has told what he knows when apparently it is in conflict with his records. I wanted to ask him to explain, if he can. Now, if he can't—

The Special Master: I know, and he told you that he didn't make the entry, that he didn't make the record, and that he didn't authorize that entry. He has told you that.

A. I never saw it until three years later.

Senator Hollingsworth: All right.

The Special Master: You certainly have a right to find out if he authorized those entries. You did ask him and he said no, he didn't authorize the records.

Q.133. (By Senator Hollingsworth) Did you see this record at the time copies of it were being made up for this information? A. No, you will see that this was for-

warded here by our Mr. Eager, told him to rush it over. I may have been out of town. I did not see him. Here is his letter.

Q.134. Have you looked at these records since this investigation began? A. Hardly, glanced at them.

Q.135. Did you glance at them? A. Just glanced at them this morning more closely than any other time.

Q.136. Did you glance at them at any other time? A. No, I never went through them.

Q.137. Never went through them? A. No.

Q.138. You knew you were subpoenaed here to tell your knowledge concerning this affair? A. Yes. I thought my contact was so simple that I didn't go into very much detail to catch myself on this case. I never had any contact with it whatever.

The Special Master: What did you say your position with the company is?

A. You might be surprised but I am vice-president. Apparently I probably should be fired through the ignorance I have shown here this morning.

The Special Master: I am not going to take any action one way or the other in the matter.

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.139. You are an $85,000,000.00 company or about $85,000,000.00 or $80,000,000.00? A. Oh, yes.

Mr. Bullitt: That is all I want to know.

A. This is a small thing. It has been mentioned before this morning.

Senator Hollingsworth: This is the first time you ever caused your company to part with $13,000.00 and not know what it is for.

A. I don't know about that. It may be true and might not be true.

(Witness excused.)

The Special Master: We will adjourn until 1:15.

Whereupon, the further taking of testimony in said case adjourned until 1:15 o'clock p. m. of said Thursday, August 3, 1939.

AFTERNOON SESSION, THURSDAY, AUGUST 3, 1939.

Pursuant to adjournment as aforesaid, at 1:15 o'clock p. m. of said Thursday, August 3, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

HART DARLINGTON, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. You are Mr. Hart Darlington? A. Yes, sir.

Q.2. What is your official position with the Norwich Union Society? A. I am the manager of the New York Department, and the same as United States manager of the company. I am chief official in the United States.

Q.3. It is an English or Scottish company? A. An English company.

Q.4. What is your position with the Eagle Fire Insurance Company? A. President of the Eagle.

Q.4½. That is a New York company? A. That is a New York company.

Q.5. Were these your positions in the years 1935 and 1936? A. Yes, sir.

The Special Master: Those are under common management?

A. They are, common ownership and management.

The Special Master: Just to spread the agencies of the plants?

A. No, but the companies operate in groups, and we have a group of two.

The Special Master: Yes, I know, but ordinarily they have agreements where they won't let them have more than so many agents in the town, but that doesn't extend to the affiliated companies.

A. That is true, there are those conditions some places.

Q.6. (By Judge Henson) Now, Mr. Darlington, your companies were involved in a rate litigation in Missouri from about June 1, 1930, to and including the years 1935 and 1936? A. Yes, sir, jointly with other companies in connection with them.

Q.7. Some 137 companies, at least, involved? A. Yes.

Q.8. Your premiums were impounded during that period of time, weren't they, that is sixteen and two-thirds percent of collected premiums? A. Yes, sir.

Q.9. Did you become aware of the fact that this litigation was settled or compromised? A. Well, yes, sir.

Q.10. About when? A. That is, I became aware of its having been done, yes.

Q.11. About when did you first learn of this? A. Well, you mean when or how?

Q.12. Yes, tell me how. I don't care. A. I don't recall exactly how other than in the usual—possibly through the usual formal way of advices that we would normally get from those in charge of it, but I don't recall exactly how.

Judge Henson: If there is no objection to my use of this (indicating)—

Mr. Bullitt: Yes, sure.

Q.13. (By Judge Henson) I show you Defendants' Exhibit 105, purporting to be a letter dated February 4, 1936, from the Subscribers' Actuarial Committee, and will ask you if your companies received that letter or one like it. A. I can't state that. I don't recall the letter.

Q.14. You might look it over a minute and see if it refreshes your memory with reference to the time you learned of the settlement (Witness complies).

The Special Master: Have you refreshed your memory?

A. I have no doubt but we did receive it, but I can't swear that I did receive it. I have no doubt that we did.

The Special Master: In some way or other you did receive the information that is contained in here?

A. Yes.

Q.15. (By Judge Henson) Mr. Darlington, assuming the contract of settlement to have been signed May 18, 1935, have you any memory of having received any report of that event anywhere along during the spring or summer of 1935? A. Of the—

Q.16. (Interrupting) Of the fact of the contract of settlement having been signed by Mr. O'Malley and Mr. Street, etc. A. Ours is, of course, more of a general knowledge rather than a definite knowledge, other than such notices as this that came to us from time to time, really, which did not make a great deal of impression because our whole thought was, "Well, is it about to be

closed?" The litigation had been hanging fire for many years.

Q.17. If you don't remember, I don't want to urge you. A. I don't like to say "yes" when I am not positive.

Q.18. The court decree ordering the distribution of the funds of these companies, including yours, was made February 1, 1936. Now, when, with reference to that date, did you think it was that you had your information about that settlement and its terms? A. Well, I presume that it came through a bulletin in the same way of this bulletin that you just showed me.

Q.19. Now, Mr. Darlington, can you tell us substantially what that settlement was? A. I should remember it.

Q.20. Do you recall that it was 50 per cent to the companies of the impounded monies to May 1, 1935? A. That is right.

Q.21. 50 per cent to the companies, 20 per cent to the policyholders. A. That is right.

Q.22. And 30 per cent to trustees, and out of the 30 per cent there was to be paid the expenses of the lawyers on both sides and all other expenses connected with the litigation, and if anything remained it was to be returned to the companies? A. I remember that it was 50, 30 and 20, and the 30 was for expenses.

Q.23. You are not able to fix very definitely when that information came to you unless it came through such a notice as I showed you, Exhibit 105? A. That is right.

The Special Master: He doesn't even testify that he remembers getting any such notice.

Judge Henson: No, that is very true.

The Special Master: He offers that as a probable explanation.

Judge Henson: Yes.

Q.24. (By Judge Henson) Did you have occasion to give Mr. C. R. Street, Agent, a check from each of your companies along in March, 1936? A. Checks were drawn by both companies payable to Mr. C. R. Street, Agent, yes.

(Photostatic copies of requisitions and checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 193 to 196, EFM," both inclusive.)

Q.25. (By Judge Henson) Now, I show you Exhibit 193, and will ask you if that is the requisition of the Norwich Union. A. That is.

Q.26. Bearing date March 23, 1936? A. Yes.

Q.27. I show you now Defendants' Exhibit 194, and will ask you whether or not that is the check made in pursuance to the requisition, 193? A. Yes, sir, it is.

Q.28. I show you Exhibit 195 and will ask you whether or not that is a requisition for the Eagle Fire Company for check to Mr. Street of the same date, March 23, 1936? A. Yes, sir, it is.

Q.29. I show you Exhibit 196 and will ask you whether or not that is the check of the Eagle Fire Company to C. R. Street, Agent, made pursuant to the Exhibit 195. A. Yes, sir.

Judge Henson: I offer in evidence Exhibits 193, 194, 195 and 196.

(Which said Defendants' Exhibits 193, 194, 195 and 196, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

1st. / NORWICH UNION FIRE INS. SOCIETY, Ltd.

Date, 3/23 1936

Cashier:

Please draw check to the order

C R Abbett Agent

and charge Legal Expenses Wis

$ 2201 37/100

Voucher No. 270365

Examined J Simple

PAID MAR 28 1936

Approved W E Mead

Accountant.

293

$2201.37

Office of the Victoria Manor Fire Insurance Company Limited

No. 270365

Pay to the order of [illegible] $3,000.00

Three Thousand and 00/100 Dollars

Countersigned

[illegible]

RECEIVED PAYMENT THROUGH NEW YORK CLEARING HOUSE FOR PRIOR ENDORSEMENTS AND GUARANTEE

MAR 25 1936

THE NATIONAL CITY BANK OF NEW YORK N.C.L.EN FESTEY GARNER, N.F.

PAY TO THE ORDER OF ANY BANK BANKER OR TRUST COMPANY

FOR DEPOSIT WITH CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

MAR 24 1936

[illegible]

D194 293

THE EAGLE FIRE CO. OF N. Y

Date 3/23 1936

Cashier:

Please draw check to the order

of R Street Agent

and charge

Legal Expenses Mo

896 60

Voucher No.

PAID

MAR 23 1936

THE EAGLE FIRE CO. OF N. Y.

Examined J Temple

Approved W E Mack

Accountant.

21078

INCORPORATED 1866

BANK NOTE COMPANY

NEW YORK

PAY TO THE ORDER OF

$15 00 Dollars

PAYABLE AT

NEW YORK

THE NATIONAL CITY BANK OF NEW YORK

N.C. LENFESTEY COMMR.

RECEIVED PAYMENT

MAR 25 1966

THE NATIONAL CITY BANK OF NEW YORK

N.C. LENFESTEY COMMR. N.Y.

FOR DEPOSIT WITH

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

PAID THROUGH CHICAGO CLEARING HOUSE

MAR 25 1966

D1965

Q.30. (By Judge Henson) Now, Mr. Darlington, will you please tell us the circumstances which induced the making of the vouchers, payout vouchers and of the checks which you have just identified? A. To the best of my recollection, Mr. Haid called on the telephone and said that he was sending over by Mr. Erskine checks representing, I believe, 11 per cent of the impounded premiums, and that there were expenses to be paid and asked that we give Mr. Erskine checks for 5 per cent of the impounded premiums on delivery of those representing 11 per cent.

Q.31. What was the 11 per cent? What fund was that out of? A. Well, I take it that was out of the 50 per cent that was to come to the companies.

Q.32. That is your impression? A. That is my impression.

Q.33. You have no impression that it was out of the 30 per cent? A. No.

Q.34. State whether or not your company received their 50 per cent prior to that time. A. My impression is we had received no funds up to that 11 per cent.

Q.35. You now recall that afterwards you did receive the 50 per cent for each company outright? A. You mean after that date?

Q.36. Yes, anytime. A. We received quite a number of returns.

Q.37. I don't want to confuse you at all. A. I don't recollect that we have.

Q.38. Do you recollect now that you have recceived the 50 per cent return impoundments?

Mr. Bullitt: What percentage?

Judge Henson: The 50 per cent.

A. I do not.

Q.39. (By Judge Henson) Well, you say the checks that Mr. Haid was sending over was 11 per cent of your impounded premiums, and he asked 5 per cent back. A. Yes, that is for legal expenses

Q.40. For legal expenses? A. Yes, sir.

Q.41. Did he tell you what legal expenses there were? A. They were not enumerated, as I recall. The general term of legal expenses, with the understanding that we would later be given a statement showing—

Q.42. (Interrupting) The application of it? A. Yes, that is right, and they were carried on our books as such pending the receipt of that information.

Q.43. Now, did Mr. Erskine visit your office then and deliver you the 11 per cent checks? A. He did, that is, as I recall.

Q.44. Then was the occasion that these vouchers were made and these checks were issued? A. That is true.

Q.45. Did you have any explanation from Mr. Erskine as to what the 5 per cent checks coming from your companies were for? A. No, as I recall I didn't discuss the subject to any length with Mr. Erskine, having previously talked with Mr. Haid on the telephone.

Q.46. Have you told substantially all that you and Mr. Haid discussed on the telephone on that occasion? A. There was nothing further so far as I can remember at all.

Q.47. Did you ask for any details at all about the legal expense? A. You mean—

Q.48. (Interrupting) When he talked to you on the phone. A. No, I asked something about it, naturally, but the fact that it was for general legal expenses answered any inquiry.

Q.49. Did he give you to understand that all other companies were paying in 5 per cent at this time? A. Yes, I understood that the action was common by all companies, on the part of all companies, which is not unusual in many cases of this character.

Q.50. Was Mr. Haid handling the litigation for you, for your companies? A. No.

Q.51. Who was handling the litigation for your companies? A. Well, directly in charge—you are talking attorneys or company?

Q.52. Well, individuals that may have been handling it or were you handling it? A. Well, the Subscribers' Actuarial Bureau were really handling the litigation. Mr. Street was, of course, in charge of it.

Q.53. Now, that Subscribers' Actuarial Committee has its headquarters in Chicago? A. Yes, sir.

Q.54. You left the entire litigation to them or its chairman? A. That is right.

Q.55. Did you know Mr. Street? A. Very well.

Q.56. Did you ever have occasion to ask Mr. Street why this 5 per cent was collected? A. I never asked him. I don't know that I had opportunity, but I never asked him.

Q.57. Did Mr. Haid explain why the checks which you have testified about and which I have just introduced

were made to C. R. Street, Agent? A. I don't recall that he suggested that.

Q.58. Do you recall— A. (Interrupting) Although, I wouldn't say that he didn't, but we would naturally draw a check of that kind to someone as agent rather than to them as an individual.

Q.59. Do you recall why you didn't make the check to Mr. Haid? A. Well, I think Mr. Haid must have asked us to make it to Mr. Street.

Q.60. And you knew Mr. Street was handling or was chairman of the committee handling the situation? A. Yes.

Q.61. Was that what induced you to issue the check? A. No, that Mr. Street was handling it?

Q.62. Yes. A. No, sir, we would have issued the check with Mr. Street handling it and we would have issued the check with anyone acting on behalf of the companies in the same capacity.

Q.63. By "companies" you mean both your companies? A. That is right.

Judge Henson: That is all.

Cross Examination by Mr. Bullitt.

XQ.64. You knew that the 11 per cent they were sending you came out of the 30 per cent, didn't you? A. Out of the 30 per cent?

XQ.65. Yes, that out of the 30 per cent that Street and Folonie were holding as trustees for expenses, they were sending you 11 per cent as a part of that 30 per cent. You knew that, didn't you? A. Well I wasn't sure about that. I am not sure about that.

Judge Henson: I will admit that it was.

A. I thought that was the first we received.

XQ.66. (By Mr. Bullitt) What is that? A. My impression is that the 11 per cent was the first money we had received.

XQ.67. I see, and didn't you understand that you were getting that as a part of the 30 per cent that was held to take care of expenses, and you were to get the balance? A. I didn't recall that.

XQ.68. Did your company authorize or know that Mr. Street was going to use or had used any money for the purpose of bribing anybody or obtaining the influence of any official to agree to the settlement of February 1, 1936? A. Most assuredly not.

Mr. Bullitt: That is all.

Re-Direct Examination by Judge Henson.

RDQ.69. Is there anyone connected with your company that knows anything about the issuance of these checks? A. Mr. E. P. Smith is secretary. He knows about it. He came to my office when Mr. Erskine came over there, and I told him and he knows about the transaction.

RDQ.70. All he knows is what you told me? A. Well, he didn't talk to Mr. Haid. He may have talked to Mr. Erskine.

RDQ.71. You are the only one that talked to Mr. Haid? A. I am the only one.

RDQ.72. You are naturally the only one who knows about it? A. In dealing with Mr. Haid.

RDQ.73. You don't know of any other records connected with this payment of this 5 per cent other than these four exhibits I have given you and these photostats of your records? A. There are no others so far as I know.

Judge Henson: That is all.

A. The records are of our books as they are, and of the checks.

Judge Henson: That is all.

(Witness excused.)

A. T. TAMBLYN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. Mr. Tamblyn, what is your official connection with these matters? I understand your companies have changed names or absorption. A. I am the president of the Lincoln Fire Insurance Company.

Q.2. At this time? A. At this time, and the Lincoln Fire absorbed the Chicago Fire and Marine and the Presidential at the close of 1931.

Q.3. 1931? A. Yes.

Q.4. The Chicago Fire and Marine Insurance Company, then, and the Presidential Fire and Marine Insurance Company, both had impounded premiums? A. Right.

Q.5. Up to the time of this merger or absorption that you talk about? A. Right.

Q.6. As I understand that, the Lincoln Fire Insurance Company of New York, which took over these companies at the end of the year, 1935— A. (Interrupting) took them over at the end of '31.

Q.7. Pardon me, that company, the Lincoln Company, has no impoundments? A. Had none before now and only has that impoundment because we absorbed those two companies and has it listed in its liabilities.

Q.8. State whether or not you have that because of the fact you took over liabilities and assets and the assets would include any rights that you had in this impoundment. That is true, is it? A. Correct.

Q.9. Now, I don't believe I asked you, were you connected with the Chicago Fire and Marine and the Presidential Fire and Marine during the period of the impoundment and up to the last of the year 1931? A. Not previous to that. Those two companies merged into one at the end of '31.

Q.10. That is when you came into the picture? A. Yes.

(Photostatic copy of a check, handed to the reporter, was marked for identification as "Defendants' Exhibit 197, EFM.")

Q.11. I show you Exhibit, Defendants' 197, which I now introduce in evidence, which seems to be the check of the Lincoln Fire Insurance Company dated April 15, 1936, for $694.52, that is payable to C. R. Street, Agent? A. Yes.

(Which said Defendants' Exhibit 197, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

301

THIS VOUCHER CHECK IS IN FULL SETTLEMENT OF THE FOLLOWING INVOICES. IF NOT CORRECT RETURN WITHOUT ALTERATION AND STATE DIFFERENCE.

DATE		AMOUNT	
Real Est. Impounded			
Prems.-Services & Legal Expense			
Presidential		177	33
Chicago F.& M.		517	19
		694	52

LINCOLN FIRE INSURANCE CO. OF NEW YORK

NEW YORK April 15, 1936 No. 5676

PAY TO THE ORDER OF C. R. Street, Agent $ 694.52

SIX HUNDRED NINETY-FOUR AND 52 CTS. DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

AN OFFICER OF THE COMPANY

AN OFFICER OF THE COMPANY

TO THE NEW YORK TRUST COMPANY
NEW YORK.

1-114

C. R. STREET, AGENT

PAID THROUGH CHICAGO CLEARING HOUSE
APR 16 1936
OF CHICAGO
2-11

MAIL TELLER AM 11

THE NATIONAL CITY BANK OF NEW YORK
APR 17 1936
N. CLENFESTEY, CASHIER

1936

Q.12. (By Judge Henson) I wish you would state to us the circumstances under which this check was issued. A. I would be very glad to. When we absorbed those two companies, we found ourselves with a questionable asset of about $13,000.00, and the handling of it was in the hands of the Actuarial Committee.

Q.13. In Chicago? A. In Chicago, and by a committee headed by Mr. Street. I determined as representing those companies, to follow the leaders and do whatever they did. Whatever I was instructed to do I did, hoping some money would come back sometime.

Q.14. Who suggested the making of this check? A. Mr. Erskine came to see me.

Q.15. What did he bring with him? A. Mr. Erskine brought a check for 11 per cent of the impounded premiums which I understood was a part of the 30 per cent, and told me that they wanted the check for 5 per cent of our impounded premiums to the order of Mr. Street for purposes that the attorneys would decide.

Q.16. For purposes which the attorneys would decide? A. Yes, and as I recall, the chief question I asked him was whether all of the companies were paying that 5 per cent in and he told me they were, and so I called in our accountant, the secretary of my company, and authorized him to draw the check and to either hand it or send it to Mr. Erskine. Regarding this 5 per cent, he asked that it be drawn to Mr. Street, Attorney, and the one question that I do remember that I asked him was whether that was the same proportion of the impounded premiums that everybody was paying, and if so I would authorize the check, which I did.

Q.17. Then you gave him the check, the photostat of which was identified? A. Yes.

Q.18. And Mr. Erskine took it with him? A. As I recall it.

Q.19. You intended Mr. Street to take that and use it as he saw fit? A. Yes, correct.

Q.20. Now, Mr. Tamblyn, did you know the terms of the settlement in a general way? I guess you have heard it discussed here. A. Yes, I did.

Q.21. Did you understand what the 30 per cent was for? A. I understood that the 30 per cent, that part of it might ultimately come to the companies.

Q.22. And this 11 per cent check that he brought? A. That the 11 per cent was probably a first payment on that from the 30 per cent.

Q.23. I will ask you whether or not you understood that this 11 per cent was monies out of the 30 per cent that would not be required to be paid out as legal expenses. A. That is what I understood.

Q.24. Then why didn't you question this a little bit farther as to why you should pay in 5 per cent? A. Because I completely trusted the committee, and I felt there was some reason why they wanted it that way, and if all of the other companies were willing to do it, I was new in the situation, I was a step-child and I thought I would do it.

Q.25. That is what you meant by giving them a check, to let them go ahead and do as they pleased? A. Yes.

Judge Henson: That is all.

Cross Examination by Mr. Bullitt.

XQ.26. Your company, Lincoln, was not doing any business at that time in Missouri, was it? A. No.

XQ.27. The other two companies, the Presidential and the Chicago Fire and Marine, had passed out of active existence in Missouri, hadn't they? A. They were absorbed by us. They may have done a little business under the name of the Chicago Fire and Marine Department.

XQ.28. You knew that the 11 per cent you were getting back was a part of the 30 per cent? A. I thought it was, yes.

XQ.29. And the 5 per cent that you gave back to Mr. Street was a part of the 11 per cent? A. That might be a reasonable deduction.

XQ.30. Therefore, the 5 per cent that went back to Mr. Street was a part of the 30 per cent for expenses? A. Yes, I assumed they wanted it that particular way for some purposes known to the committee, and I trusted them. I only met Mr. Street once or twice, but by reputation I thought he was a splendid, reputable fellow and we were in good hands.

XQ.31. Defendants' Exhibit 197, your check to the order of Mr. Street for $694.52, has in the margin the words, "*Re* Missouri impounded premiums, services and legal expense." How did you happen to have those words put into the check, and where did you get that information? A. Well, I probably called Mr. Becker, at the head of our accounting department, in when Mr. Er-

skine was there and told him to word it as best he could, and that is the way he worded it.

XQ.32. Did anybody tell you that the check was for legal expenses and that is the reason you put it on the check? A. My impression is that Mr. Erskine suggested it was for legal expenses.

XQ.33. Is that all you had to do with the payment of this money to Mr. Street? A. That was all I had to do with it. I was following—we in the factory association, whenever we were in the group in a small company, we do what they do, follow along.

XQ.34. Did you know Mr. Street? A. I had met Mr. Street. I didn't know him intimately. I knew him by reputation.

XQ.35. Did you authorize Mr. Street or anybody in your company, authorize him or know that any part of this money was going to be used to bribe anybody or to procure any consent to this settlement order? A. Most certainly not.

Mr. Bullitt: All right, that is all.

A. Not the slightest intimation.

Re-Direct Examination by Judge Henson.

RDQ.36. Mr. Tamblyn, another question. I will ask you whether or not this photostatic copy of the check and the photostats of ledgers, etc., here, whether or not that is all the written records you have about your office connected with this payment of 5 per cent. A. I instructed the head of our accounting department and the file department to fish out everything we had and forward it, and I assume that is everything, and so far as I know every letter and word that we had.

RDQ.37. Is there anyone else connected with your company that you know of that knows anything more about this transaction than you and what you have detailed here? A. No one. Mr. Becker, the secretary of our company, and the head of the accounting department for our group of companies, simply did as I instructed him.

RDQ.38. And so far as you know, would know only what you told him? A. He only did what I instructed him to do.

Judge Henson: That is all.

(Witness excused.)

LOUIS MOECKEL, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Where do you live, Mr. Moeckel? A. 3250 Perry Avenue, the Bronx.

Q.2. What is your connection with the Continental Insurance Company? A. Supervisor of the statistical department. I say I am supervisor of the statistical department.

Q.3. The Continental Insurance Company group consists of the Continental Insurance Company, the American Eagle, Fidelity-Phenix, First American, and the Niagara Fire? A. And the Maryland Insurance Company of Delaware.

Q.4. What was your connection with these companies in 1935 and 1936? A. The same capacity.

Q.5. Were you the official of the company who had charge insofar as your company had charge of the fire rate litigation? A. No.

Q.6. Who did have charge of that? A. I think that was handled entirely in the Chicago office.

Q.7. Entirely in the Chicago office? A. Yes.

Q.8. And your information came from the Chicago office? A. My information came from the Chicago office.

Q.9. Did you know that the Chicago office handled it through the Subscribers' Actuarial Committee? A. Yes, sir.

Q.10. And that Mr. Charles R. Street had charge of it? A. Right.

Q.11. Of course, you recall that the compromise was made. A. Well, frankly, I am not familiar with the details. I was only instrumental in drawing the checks that were in question here.

Q.12. You just drew the checks? A. Drew the check orders.

Q.13. Now, you were in New York at that time? A. Right.

Q.14. Did you write any checks in connection with this matter other than the checks that were given for 5 per cent of the impounded premiums? A. No, sir.

Q.15. Did you attend a meeting of the heads of certain insurance companies or executives of certain insur-

ance companies here in this office in May of 1935? A. I don't recall that I did, no, sir.

The Special Master: What is your position with—

A. (Interrupting) Supervisor of the statistical department.

The Special Master: You are not an executive at all?

A. No.

Q.16. (By Senator Hollingsworth) Did you on May 2, 1935, draw or have drawn a check in the sum of $15,000.00? A. I drew the check, or the cashier drew the check.

Q.17. I hand you Defendants' Exhibit 5 and ask you to state if that is the check. A. That is the check, yes, sir.

Q.18. From whom did you get the information in regard to the writing of that check? A. Mr. Emes, the comptroller.

Q.19. What information did you get from Mr. Emes? A. It was for legal expenses.

Q.20. Was that the extent of your information? A. That is the extent of the information I got.

Q.21. You had no other information about the matter? A. No, sir.

Q.22. And you simply wrote the check or caused it to be written and then delivered it to— A. (Interrupting) Mr. Emes.

Q.23. You had no talk with Mr. Haid? A. No, sir.

Q.24. Nor with Mr. Erskine? A. No, sir.

Q.25. Nor Mr. Street about the matter? A. No, sir.

(Memorandum, handed to the reporter, was marked for identification as "Defendants' Exhibit 198, EFM.")

Q.26. I show you on Defendants' Exhibit 198, which purports to be a memorandum from Mr. Louis Moeckel, did you write that? A. Yes, sir, I did.

Q.27. When was this written? A. This was written on December 18th.

Q.28. December 18th? A. 1935.

Q.29. From whom did you get the information contained in that memorandum which I now offer in evidence? A. From Mr. Emes, the comptroller.

(Which said Defendants' Exhibit 198, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Memo from

MR. LOUIS MOECKEL

COMPLIMENTS OF THOS. P. GIBBEY PRINTING CO

Chas R. Street Chairman
" " 15,000. Mo Legal Expense

Rd May 4-1931
Per Calvin says Bring up ~~Charles~~ Dept 1
6/15/30 of

T. P. Kelly
1-15-31 Rd 1/31/31

12/4/35

The 15000 advanced to Mr Street for legal Expense will eventually be returned to us but not before the end of the year the Auditor does not want the Dept. charged for this item and we order to transfer it over the end of the year the Auditor had the Items forwarded has asked proper for a basis of apportionment It has been decided to let the charge rest with the Rent + L. P. as a 50/50 basis & be charged to General Expense

D/98

Q.30. Where is Mr. Emes now? A. At the home office, 80 Maiden Lane.

Q.31. On this memorandum there purports to be another piece of paper which, I presume, has been superimposed on it simply for the purpose of photographing. A. That is a memorandum Mr. Emes gave me.

Q.32. That is a memorandum that he gave you and this is your memorandum (indicating)? A. Right.

Q.33. Now, the memorandum that Mr. Emes gave you, "Charles R. Street, Chairman, $15,000.00, Missouri legal expense, Paid May 2, 1935. Mr. Culver says bring up, September 1," then another date down here, "6-1" something, what is that? A. That is the date I wrote that memorandum on there.

Q.34. You said, "Mr. Culver says to bring up." What did Mr. Emes tell you at the time that you wrote this memorandum? A. He told me that would be charged for legal expenses and the money would be returned to us eventually from the Western Department. We allocate all such expenses to the department producing the cost.

Q.35. He said to tell you "Mr. Culver says bring up September 1"? A. Yes.

Q.36. Bring up before whom? A. Bring up to him.

Q.37. Bring up to Mr. Culver? A. Yes, sir.

Q.38. Does this memorandum mean that Mr. Emes turned this over to you to bring the matter up to Mr. Culver on September 1st? A. That is right.

Q.39. And at the time you got that from Mr. Emes that was the only writing you made? A. That is right.

Q.40. Did you bring it up before Mr. Culver on September 1st? A. I believe I did.

Q.41. And this shows that Mr. Emes talked with you and you made this first memorandum "6-15-35"? A. That is right.

Q.42. Did he tell you you were to bring to Mr. Culver's attention on September 1, 1935— A. (Interrupting) The idea was we were to get the money back from the Chicago office.

Q.43. You were to get your money? A. From the Chicago office, and I was to bring it up at that time, if we hadn't gotten it back at that time, to bring it up and inquire when we would get it back.

Q.44. Did you bill your Chicago office for it at the time the check was written? A. No.

Q.45. Why didn't you? A. Mr. Culver requested me not to.

Q.46. What did Mr. Culver say to you about not billing your Chicago office at the time you wrote the check? A. Just said he didn't want it billed at that time.

Q.47. Why, did he say? A. I have no idea why.

Q.48. Well, that was most unusual that an expenditure which was normally chargeable to the Chicago office should not be billed to the Chicago office at the time the expenditure was made, wasn't it? A. It may have been because as an advance payment, it wasn't complete, and then again we didn't have the complete information to make the allocation among all of the companies.

Q.49. How do you know you didn't? A. Well, the memorandum states we are to get the information from Mr. Henne upon which to base the apportionment among the companies. And they evidently did not come through, that is why we let the charge rest fifty-fifty with the Continental and Fidelity-Phenix until the end of the year.

Q.50. Why was it that you couldn't allocate it among the companies? A. My recollection is we didn't have the basis to make the apportionment.

Q.51. The basis, you mean the proportionate premiums? A. Yes.

Q.52. You didn't have that? A. Didn't have it. The New York office didn't have it.

Q.53. The New York office didn't have it? A. No.

Q.54. In other words, now, here on May 2, 1935, a disbursement of $15,000.00 properly chargeable to the Chicago office was made out of the New York office? A. That is right.

Q.55. Did you learn who had requested or called for this check? A. No, my only information—

Mr. Bullitt: A little louder. I can't hear.

A. My only information or knowledge is that it came to me through Mr. Emes from Mr. Culver.

Q.56. Mr. Emes didn't tell you at the time you wrote the check who was requesting the check? A. No, sir, he did not.

Q.57. Of course, you knew that it was payable to Charles R. Street? A. I knew it was payable to Mr. Street.

Q.58. Then that was on May 2, 1935. Now, what happened on June 15, 1935, that caused you to make this

memo wherein you recited that Mr. Culver says to bring up September 1, 1935? A. Well, I probably spoke to Mr. Culver or Mr. Emes about getting the money back from Chicago, and he said, "Bring it up September 1," at that date.

Q.59. When you spoke to Mr. Culver or Mr. Emes about getting the money back from Chicago, you had not billed the Chicago office? A. No, sir.

Q.60. And you had not billed the Chicago office because you had instructions from Mr. Culver not to bill it? A. That is right.

Q.61. The reason you brought it up was that in ordinary course it should have been billed? A. It should have been billed.

Q.62. Then you got no satisfaction from Mr. Culver, he said to bring it up September 1st? A. That is right.

Q.63. Did you ask Mr. Culver why it shouldn't be billed in ordinary course? A. No, sir, I did not.

Q.64. Did Mr. Culver tell you? A. No, sir.

Q.65. Then you brought it up on September 1st? A. Yes.

Q.66. With Mr. Culver? A. Either Mr. Culver or Mr. Emes, I don't recall who.

Q.67. What did you say to Mr. Culver or Mr. Emes? A. I just asked, perhaps, if we would get the money back this year or that particular year.

Q.68. You hadn't billed them for it? A. I hadn't billed it.

Q.69. Did you ask them if you should then bill them? A. I didn't ask them if I should, no, sir.

Q.70. That was on September 1st? A. It was.

Q.71. That you brought that up. What did Mr. Culver or Mr. Emes tell you? A. Well, I can't recall that they said anything further than that.

Q.72. What did he say? A. I brought it up at a later date.

Q.73. Well, you brought it up on September 1st; now, what happened on September 1st? A. My knowledge is that I just brought it up to find out if it was to be billed to the Chicago office.

Q.74. What information did you get? A. Not to be billed.

Q.75. Not to be billed? A. Right.

Q.76. Any reason given you why it shouldn't be billed? A. No.

Q.77. It was mystery in your mind? A. A mystery to me.

Q.78. You didn't understand it? A. I didn't understand it.

Q.79. It was an item that was up in the air? A. Up in the air. I thought it would probably be billed eventually.

Q.80. Giving you some concern, was it? A. No.

Q.81. On September 1st, did Mr. Culver tell you to bring it to his attention again at a later date? A. I don't recall that he did.

Q.82. Do you recall that you brought it to his attention again before December 18, 1935, when you made your second memorandum? A. I don't recall.

Q.83. Now, the second memorandum reads this way, "The $15,000.00 advanced to Mr. Street for legal expense will eventually be returned to us, but not before the end of the year." A. Right.

Q.84. Whom did you get that information from? A. Mr. Emes.

Q.85. Did Mr. Emes tell you why this money was to be returned? A. Well, it is the practice of our company to allocate those charges to the Chicago—or the office producing the expense.

Q.86. When you said "will eventually be returned to us," did you mean it would be returned to you from the Chicago office? A. From the Chicago office.

Q.87. That was your understanding of this memorandum? A. Right.

Q.88. But not before the end of the year. Mr. Culver did not want the Western Department billed for this item? A. That is right.

Q.89. Mr. Emes told you that again on December 18, 1935? A. Well, I wouldn't say on December 18th. That memorandum was only written on December 18th. I might have gotten that information any time between May or whenever that check was first drawn and that date.

Q.90. Did you ever learn before December 18, 1935, why Mr. Culver did not want the Western Department billed for this item? A. No, sir, I did not.

Q.91. The Western Department had not, so far as you know, been given any information whatever on December 18, 1935, or before, that this expenditure had been made? A. As far as I know they did not.

Q.92. In connection with this litigation? A. That is right.

Q.93. And you would have been the man to have passed that information on to them? A. Not necessarily.

Q.94. To the Western Department? A. Mr. Emes might have, or I would. I would have passed it on if I was told to.

Q.95. In ordinary course you were the man who did pass on the debits and credits, weren't you? A. What do you mean "pass on them"?

Q.96. Give the information to them. A. I would have billed the Chicago office if I were instructed to.

Q.97. And you hadn't billed them? A. No, I hadn't billed them.

Q.98. "And in order to handle it"— A. Over the end of the year, probably.

Q.99. (Continuing) —"over the end of the year, Mr. Culver had Mr. Henne furnished"— A. (Interrupting) Furnished Missouri premiums.

Q.100. "Furnished Missouri premiums"— A. For a basis of apportionment.

Q.101. "For a basis of apportionment." "And in order to handle it over the end of the year, Mr. Culver had Mr. Henne furnished Missouri premiums for a basis of apportionment." You got that information from Mr. Emes? A. Right.

Q.102. What does it mean "furnished Missouri premiums for a basis of apportionment?" A. Well, that would mean that Missouri impounded premiums would have been furnished for the allocation among the companies involved for their proportion of the charge.

Q.103. I simply don't understand it.

The Special Master: Let's see if I can state it and if you tell me whether I tell it right. This all happened in the Western Department. The Western Department, for underwriting purposes, is run separately from the home office, and it keeps its records concerning the premiums.

A. That is right.

The Special Master: And things of that kind. This payment was made in the home office and they didn't know how many premiums were impounded by the different companies. They, therefore, made a request on the Western Department to furnish them the statement of how many impounded premiums each one of the companies had so that they could use that basis to apportion

this payment, the payment to be charged against the various companies in proportion to the amount of premiums that they had impounded in Missouri. Is that what that means?

A. That is right.

Q.104. (By Senator Hollingsworth) But you still didn't advise the Western Department the purpose for which Mr. Henne was required to furnish the Missouri premiums? A. I didn't, no.

Q.105. And so far as you know, he wasn't advised the purpose for which he furnished you that information? A. So far as I know. I don't know whether he was or not.

Q.106. "It has been decided to let the charge rest with the Cont. and F. P." "F. P." is the Fidelity-Phenix —"on a 50-50 basis to be charged to General Expense." Now, you had—

The Special Master: The Continental and the Fidelity-Phenix were the two bigger—

A. (Interrupting) That is right.

The Special Master: They were almost the same size so far as Missouri written premiums?

A. Approximately the same.

The Special Master: And those two had the overwhelming majority of all of the premiums in the group?

A. That is right.

Q.107. (By Senator Hollingsworth) But you had before you the proportionate part of the premiums of all of your companies? A. No, they didn't come through.

Q.108. They didn't come through? A. No.

Q.109. Mr. Culver had Mr. Henne furnish—it says here in your memorandum— A. (Interrupting) It says that, but nevertheless the premiums didn't come through. I never got them.

Q.110. You didn't get them? A. No.

Q.111. Did Mr. Emes know at that time that you had never gotten them? A. He might have. I don't recall whether he did or not.

Q.112. Well, who decided to let the charge rest with Continental and "F. P. on a 50-50 basis"? A. That was probably Mr. Emes' thought, and mine, also.

Q.113. "To be charged to General Expense." A. Yes, sir.

Q.114. Why did Mr. Emes want to charge it to General Expense? A. Well, the term "General Expense" as used there means it is an expense that couldn't be allocated to any particular department and was allocated against the company as a whole.

Q.115. Why couldn't you allocate it against the Western Department? A. Well, we could have, I suppose, but it was just decided to rest it fifty-fifty.

Q.116. Wasn't it done because you didn't want the Western Department to know that the payment had been made at that time? A. I wouldn't say so, no.

Q.117. Isn't that your best judgment now? A. No, it isn't.

Q.118. Why were you keeping that fact from the Western Department? A. I don't know that it was kept from the Western Department.

Q.119. You have no information? A. My knowledge, and my own personal knowledge is that they were never advised. I don't know, maybe they were. I never advised them.

Q.120. You never undertook to ascertain? A. No.

Q.121. But Mr. Emes, you think, would know.

Mr. Bullitt: We have sent for Mr. Emes. He will be here in a moment.

Q.121½. (By Senator Hollingsworth) Did you ever charge it to legal expenses? A. It always rested as legal expense.

Q.122. Then why did you say here "to be charged to General Expense"? A. Well, that just means a classification as between a department expense and a company wide expense.

The Special Master: Just like you would make Missouri Expense or Home Office Expense?

A. That is right.

(Photostatic copies of letters, handed to the reporter, were marked for identification as "Defendants' Exhibits 199, to 202, EFM," inclusive.)

Q.123. (By Senator Hollingsworth) I show you Defendants' Exhibit 199, which I offer in evidence, which purports to be a copy of a letter written by the treasurer of your company addressed to Paul L. Haid, president of the Insurance Executives Association, whose initials are those (indicating)? A. These are Mr. Charles E. Swan.

Q.124. I note there it says "As requested in your memorandum to Chairman Sturm, we are attaching check

in the amount of $22,323.12 to the order of C. R. Street, Agent." Do you find in that file anywhere a memorandum such as he refers to in that letter? I don't know whether there is one in there. A. I don't seem to see such a memorandum.

(Which said Defendants' Exhibit 199, so offered in evidence, and read to the Master, having been previously duly marked, is in words and figures as follows:)

"America Fore"

The Continental Insurance Company
Niagara Fire Insurance Company
First American Fire Insurance Company
Fidelity-Phenix Fire Insurance Company
American Eagle Fire Insurance Company
Maryland Insurance Company of Delaware

Ernest Sturm, Chairman of the Boards
Bernard M. Culver, President
Eighty Maiden Lane, New York, N.Y.

March 21, 1936.

Mr. Paul L. Haid, President
Insurance Executives Association
116 John Street
New York City.

Dear Mr. Haid:

As requested in your memorandum to Chairman Sturm, we are attaching check in the amount of $22,323.12 to the order of C. R. Street, Agent.

Yours very truly,

Treasurer.

Encl.

D 199

Q.125. (By Senator Hollingsworth) It doesn't seem to be there? A. No.

Q.126. Is Mr. Sturm living? A. No.

Q.127. When did he die? A. I think it was the end of December, 1936, sometime. I think it was.

Q.128. Now, I show you Defendants' Exhibit 200, which purports to be a copy of a letter written by Mr. C. E. Swan to W. D. Jones, assistant auditor, and note it carries this notation, "Copy to Mr. L. Moeckel." Did a copy of that reach you? A. Yes, sir.

(Which said Defendants' Exhibit 200, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"America Fore"

THE CONTINENTAL INSURANCE COMPANY
NIAGARA FIRE INSURANCE COMPANY
FIRST AMERICAN FIRE INSURANCE COMPANY
FIDELITY-PHENIX FIRE INSURANCE COMPANY
AMERICAN EAGLE FIRE INSURANCE COMPANY
MARYLAND INSURANCE COMPANY OF DELAWARE

ERNEST STORM, Chairman of the Boards
BERNARD H. CULVER, President
EIGHTY MAIDEN LANE, NEW YORK, N.Y.

Copy to Mr. L. Moeckel. March 21, 1936.

Mr. B. W. Jones, Assistant Auditor
Chicago Office.

Dear Mr. Jones:

We have today received checks signed by H. G. Polonie and C. R. Street, Trustees, to order of our Companies as follows:

Continental	$31,518.13
American Eagle	5,192.61
Fidelity-Phenix	37,036.10
First American	2,867.80
Niagara	5,496.84
Total	$82,110.68

We have credited your office with these amounts as remittance to Home Office as we understand they are credits to the Missouri Impounded Premium Account and proper credit entries should be made at your office. Attached is copy of slip received with the checks.

Payment was also made by us to C. R. Street, Agent, of $22,323.12 and charged to legal expense. This charge, together with similar item of $15,000. paid by us last year, will be referred to President Culver upon his return for possible adjustment with your office.

Kindly acknowledge receipt.

Yours very truly,

Treasurer.

Q.129. (By Senator Hollingsworth) Now, then, I notice in this letter of March 21, 1936, in the last paragraph, it reads as follows: "Payment was also made by us to C. R. Street, Agent, of $22,323.12 and charged to legal expense. This charge, together with similar item of $15,000.00 paid by us last year, will be referred to President Culver upon his return for possible adjustment with your office." So far as you know, was this March 21, 1936, letter the first time that the Western Department had any information as to the $15,000.00 payment?

Mr. Berger: Of course, I object to the form of the question as rather misleading to ask this one man out of all of the many people in the employ of the Continental Insurance Companies as to when or why or how the Western Department got—

The Special Master: I think the question is admissible. It shows whether he did it or whether he did anything before. It has no tendency to show that somebody else didn't do it.

Mr. Berger: The form of the question he is asking—

Judge Henson: It is so qualified as to limit it to his knowledge.

Mr. Berger: It is leaving the impression that is a fact.

The Special Master: It doesn't leave that impression on me. What other person are you afraid of?

Mr. Berger: Unless some court—

The Special Master: No, when I report what the witnesses testified to, there won't be a chance in the world that Judge Otis or Judge Reeves or Judge Stone would understand any more than that he didn't do it. That is all it proves.

Judge Henson: The question is further qualified to put it within his knowledge.

Q.130. (By Senator Hollingsworth) Will you answer the question please? A. Yes, that is the first knowledge I had that they would probably be advised.

Q.131. Did I understand you to say that in the ordinary course you would be the person who would render the bills to the Western Department for charges? A. Yes, sir.

The Special Master: I think the witness has made this very clear. Here is what he says: He was told not to forward it. He recognized it as a Western Department expense immediately. Am I right?

A. Right.

Q.132. (By Senator Hollingsworth) He would have immediately billed it, accordingly, to the Western Department, except he was advised not to do so, and later on he did so, and this is when he did it, is that right? A. That is correct.

Q.133. Now, then, the sentence further reads, reading in the entirety, "This charge, together with similar item of $15,000.00 paid by us last year, will be referred to President Culver upon his return for possible adjustment with your office." Now, from then on, did you get any instructions or make any entries on your books adjusting that matter? A. No, I think from that point Mr. Swan handled it.

Q.134. Why did Mr. Swan handle it, if you know? A. I think he got—he came in the picture when this $22,000.00 item was drawn, the check for $22,000.00. When Mr. Sturm got the memorandum, which seems to be missing, and he merely got the instruction from Mr. Swan to draw a check for $22,000.00 and I think there is another letter requesting the Chicago office to remit to us for the full amount of the expense, $37,000.00.

Q.135. Now, I show you Defendants' Exhibit 6, which has heretofore been introduced in evidence, I think at the Chicago hearing, copy of a letter addressed to Mr. E. A. Henne, signed by the President. I want to know now if this was brought to your attention. It says: "During my absence the question of providing money to cover legal expenses in the Missouri rate case had some consideration, and a payment of $22,323.12 was made, which, in addition to the fifteen thousand already paid some time ago, shows a payment by our companies of $37,323.12.

"It seems to me that the easiest way to dispose of this matter is for you to send us one check for this amount, namely $37,323.12, and we will make proper disposition of it here and clear our books."

Now, did you have anything to do with handling the transaction concerning which the president wrote Mr. Henne in that exhibit? A. Only to the extent when we got the money I credited it up properly against the two companies.

Q.136. That came in in due course following this letter? A. That is right.

Q.137. Now, it says this to Mr. Henne: "I assume that you will charge the item to legal expense in con-

nection with the Missouri case, but that part of the transaction I will leave to your best judgment.

"If you agree as to this plan, I would be glad to have your check," etc.

You did get the check? A. We got the check.

Q.138. Did you get any information whether Mr. Henne had exercised his judgment and charged it to legal expense? A. It rested with legal expense.

Q.139. It rested? A. Yes, sir.

Q.140. I show you Defendants' Exhibit 7 which has heretofore been introduced in evidence which, according to notation, came to your attention? A. Yes, sir, right.

Q.141. The letter is addressed to Mr. Culver and is signed by "BWJ" and it is dated April 20th:

"In the absence of Vice President Henne, Miss McCormick, his secretary, has referred to me for attention your letter of April 16 with reference to the payments made by the Home Office amounting to $37,323.12 for legal expenses in connection with the Missouri Rate Case.

"In accordance with your suggestion we are enclosing herewith Continental Insurance Company check," etc.

Now, that letter says nothing about charging it with legal expenses?

The Special Master: Who wrote that letter?

A. Mr. Jones.

Q.142. (By Senator Hollingsworth) In the absence of Mr. Henne? A. The assistant auditor in the Chicago office.

The Special Master: Did you have anything to do with it?

A. No, Mr. Jones wrote this to Mr. Culver. I merely got a copy of it.

Q.143. (By Senator Hollingsworth) Why were you sent a copy? A. To merely complete my file on the subject.

Q.144. Did it cause you to make any entries on the books? A. Yes, I got the check and I credited it up to the Continental and Fidelity in equal proportion.

Q.145. Why did you credit it to legal expense when you had not received any word in the letter to so credit it, when Mr. Henne had been asked in the letter to determine which way it would be credited? A. We had the charge on our books as legal expenses. That is the way I wrote it up.

The Special Master: Mr. Hollingsworth, how they would charge it in the Chicago office wouldn't have anything to do with the way they would credit it here. They would credit it in order to offset what they already had on their own books, regardless of what they did in the Chicago office. Am I right about that? A. That is right.

The Special Master: If you had charged it up all against one of your subsidiaries, you would have given that one the credit, regardless of how they allocated it or anything else?

A. That is right.

The Special Master: That suggestion, as I understand it, made to Mr. Henne about how it would be charged, was how they might handle it in the Chicago office. It had nothing to do with how it had been handled at this office, and how it had been handled would necessarily govern how it would be credited when the money came in. Am I right about that?

A. Right. We would have to credit it out where it was charged.

The Special Master: It was merely a suggestion as to what the process might be in the Chicago office?

A. Yes.

Q.146. (By Senator Hollingsworth) Then I hand you Defendants' Exhibit 9, which is another letter from Bert W. Jones to William H. Emes. I want to ask this question for the purpose of clearing the matter up in my own mind. Now, that letter is dated October 29, 1936, and contains the following information, signed by Bert Jones addressed to Mr. Emes:

"Enclosed is copy of a letter sent out by Mr. C. R. Street to the Governing Committee of the Western Underwriters concerning treatment of expense in connection with the Missouri Impounded premiums insofar as the annual statement is concerned. The decision in connection with this matter, of course, lies with you." That meant as to how that should be handled, this disbursement was left with your office for the purpose of making up your annual statement? A. Yes.

Q.147. Mr. Emes is available? A. Yes, sir.

Senator Hollingsworth: I think that is all.

The Special Master: Even by the time this money came back you knew you had charged it up wrong in the first place, yet you would have credited it back the same way when the only object was to wipe it off of your books, wouldn't you?

A. Oh, yes, it would have been credited wherever it was charged.

The Special Master: Even though it was wrong in the first place?

A. We would have no other alternative. If I charged it to rent, I would have to credit it to rent.

The Special Master: To get it off of the books?

A. Yes.

(Witness excused.)

Senator Hollingsworth: In connection with this witness' testimony, I want to introduce in evidence Exhibits 201 and 202.

(Which said Defendants' Exhibits 201 and 202, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

"America Fore"

THE CONTINENTAL INSURANCE COMPANY
NIAGARA FIRE INSURANCE COMPANY
FIRST AMERICAN FIRE INSURANCE COMPANY
FIDELITY-PHENIX FIRE INSURANCE COMPANY
AMERICAN EAGLE FIRE INSURANCE COMPANY
MARYLAND INSURANCE COMPANY OF DELAWARE

EVEREST STURM, Chairman of the Boards
BERNARD H. CULVER, President
EIGHTY MAIDEN LANE, NEW YORK, N.Y.

March 30, 1936.

Mr. B. W. Jones, Assistant Auditor
Chicago Office.

Dear Mr. Jones:

On the 21st instant we wrote you as per the attached letter and requested that you acknowledge receipt of same.

Not having heard from you we are wondering if this letter was ever received by you. Kindly let me know.

Yours very truly,

Treasurer.

Encl.

D 201

"AMERICA FORE"

INTER-OFFICE COMMUNICATION

WESTERN DEPARTMENT

DATE April 1, 1936

TO

Mr. Chas. E. Swan, Treasurer,
New York Office.

COMPANY

SUBJECT

RECEIVED
APR 2 1936
CHAS. E. SWAN

Dear Mr. Swan:

Please accept my apology for not acknowledging receipt of your letter of March 21 with reference to the receipt of checks by the Home Office from R. G. Polonie and C. R. Street, Trustees, which was drawn to the order of our companies as follows:

Continental	$ 31,618.13
American Eagle	5,192.61
Fidelity-Phenix	37,036.10
First American	2,867.80
Niagara	5,496.24
Total	$ 82,110.88

We have made the necessary entries on our cash books which will appear in the March Office Accounts.

I note you will advise us with reference to the payment to Mr. Street of $22,323.12 which was charged to legal expense, together with a similar item of $15,000.00 which was paid by you last year.

Yours very truly,

Bert Jones

Assistant Auditor

202

W. H. EMES, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Mr. Emes, what is your present connection? A. I am comptroller of the American Fire group.

Q.2. Have you been here in the room while Mr. Moeckel was testifying, was under examination? A. Just at the finish.

Q.3. What was your connection with these companies in 1935 and 1936? A. The same position except I had a title of auditor at that time—yes, auditor.

Q.4. Mr. Culver, I believe is president of your companies? A. Then?

Q.5. Yes. A. Yes.

Q.6. Where is he? A. Why, he is on a trip, I believe, out in the Norway section somewhere.

Q.7. And Mr. Sturm is dead? I believe the record shows that. A. Yes.

Q.8. Now, Mr. Emes, you know that we have under inquiry the issuance of a $15,000.00 check in May of 1935? A. Yes.

Q.9. What was your first information concerning the issuance of this check or the reason for it? A. Mr. Culver called me into his room and asked me to have that check drawn as per that memorandum there, by that little slip.

Q.10. That little slip pasted on Mr. Moeckel's memorandum? A. That is right.

Q.11. What did Mr. Culver tell you? A. Simply that he had had a telephone call or a visit from Mr. Haid, I don't recall which, that he had been requested to have a check made up to the order of Charles R. Street, Agent, for $15,000.00.

Q.12. What else did he tell you? A. That is all.

Q.13. Did you know it was in connection with the affairs of the Western Department of your insurance companies? A. Well, I knew it was in connection with the Missouri case.

Q.14. Ordinarily that check would have been handled, or that disbursement would have been handled through the Western Department, would it not? A. It would eventually reach them for a charge, but I wouldn't say it would ordinarily be handled by them.

Q.15. Had you handled anything else in connection with the Missouri rate litigation? A. Not that I recall.

Q.16. This was the first time that your office had made any disbursement in connection with the Missouri rate litigation, wasn't it? A. As far as I know, yes.

Q.17. And, of course, the compromise was not effected and you hadn't received any money from it? A. No.

Q.18. So it was out of the ordinary routine for this item to be handled and this disbursement to have been made out of this office? A. That is right.

Q.19. Did Mr. Culver say anything to you about charging the Western Department? A. No, it wouldn't be necessary. That would have been my function, to finally decide that.

Q.20. To have finally decided it? A. Right.

Q.21. Was there any indecision on your part as to how to charge it? A. Yes, because it was an even amount you might call it. We knew no way in which to allocate it. I assumed it would apply to all of our six companies, so we had the Continental pay the sum and it was carried in suspense until such time as we were able to allocate it.

Q.22. Why didn't you write the Western Department for immediate information? A. The Western Department would have had no knowledge, and there would have been no reason for me to write them.

Q.23. You decided not to bill the Western Department? A. At that time, yes.

The Special Master: Why didn't you ask Mr. Culver? He is the man that authorized it.

A. Mr. Culver knew no more about it, as I said, any more than the telephone call he had been asked to advance the money, and Mr. Culver knows nothing about the allocation of figures in our office.

The Special Master: I know he knows nothing about the allocation, but he knew why he authorized the check, and then if you knew why he authorized the check, then you could, as an accountant, determine how it should be allocated and all that kind of thing.

A. May I explain?

The Special Master: Yes, I want to get you to do so.

A. You see, this $15,000.00 was paid by the Continental for the benefits of six companies. The Continental and the Fidelity-Phenix own the other four companies fifty-fifty. Later on we split that amount until we were able to allocate it, as the records probably show it, $7,500.00 at the end of the year, but at that time we

had absolutely no knowledge of how to split it or had no idea how to split it.

The Special Master: I know you are trying to explain it, but you didn't. The two points in my mind that are not cleared up are just as vague now as they were before, and I will try to show you what I am thinking about. In the first place, it is true that Mr. Culver knows nothing about bookkeeping entries, I suppose, or I will assume that that is true.

A. That is right, yes.

The Special Master: But if he is the man that authorized the thing, he would be the source of the knowledge that the auditor or the accountant would have to depend upon to determine the proper charge. Now, did you try to get it from him?

A. No.

The Special Master: You didn't try to get the information?

A. No, as I say, he stated at the time it was made to Charles R. Street and the minute Street's name was mentioned, I knew it was in connection with the Missouri case.

The Special Master: All right. Then you also said that you held up charging it to the Western Department, and the reason you gave is because you didn't know how it should be allocated?

A. I mean allocated by companies.

The Special Master: I understand, percentagewise.

A. That is right.

The Special Master: Well, the Western Department would know more about that than you would, wouldn't they?

A. No, I don't think they would. There are six companies and eventually we would assume at that time it would probably be apportioned on a premium basis, and what premium basis, at that time nobody knew.

The Special Master: The Western Department was closer to the Missouri litigation than you were?

A. Right.

The Special Master: In the first place, Missouri was in their department, and it was their premiums that were involved.

A. That is right.

The Special Master: They knew more about it than the home office did?

A. They knew more about the premium situation, yes.

The Special Master: They also were in the same town with headquarters where the litigation was being conducted?

Mr. Bullitt: You are wrong, Mr. Master. You are certainly assuming facts. The litigation was being conducted in Jefferson City or Kansas City.

The Special Master: No, it wasn't. It was being managed by a committee in Chicago. You knew that?

A. Yes, by Mr. Street in Chicago. I think that is the part Mr. Barnett had—

The Special Master: You understood that?

A. Yes.

The Special Master: Now, I still don't understand, since it was a matter affecting Western Department business, and since the litigation was being controlled out there in Chicago, why was there any doubt as to why the charge should be made there and let them allocate it?

A. You mean for them to advance the money? Is that what you mean?

The Special Master: Yes. It was charged against you. You had advanced your own money, and you were supposed to get it back. What was there about the fact that you didn't know how to allocate it to make you hold it up?

A. The Western Department would have returned it to us in due course, or paid the original, I suppose, if they had been asked. I don't know. That is something I don't know, but the fact that we did advance it, we would eventually have to get it back from the Western Department in order to make the proper allocation against the state that incurred that expense, which in this case was Missouri's.

The Special Master: As a matter of fact, you never did allocate it between the companies, you just split it between the two biggest companies?

A. Until at such time we got a final premium determination we split it in the one year between the two companies, but eventually that $15,000.00, plus the remainder—

Q.24. (By Senator Hollingsworth) Plus the 5 per cent? A. Whatever the remainder was, was split against the companies.

Q.25. 11 per cent.

The Special Master: But you did, in fact, ask the Western Department to reimburse you before you ever found out what the allocation was?

A. I don't know. I can't answer that.

Q.26. (By Senator Hollingsworth) The man before you testified that was true. A. I don't know. The record will show that.

The Special Master: So I still don't understand what it was that made you hold it up and not bill the Western Department?

A. No particular reason, simply held in suspense. No reason at all, simply didn't get to do it.

The Special Master: That wasn't the reason you first gave. I can understand this last answer.

A. Yes, I think I made that plain. There was no particular hurry on our department to get it from the Western as long as we had it cleaned off of our books.

Q.27. (By Senator Hollingsworth) I notice your memorandum says "Mr. Culver says bring up September 1," and this memorandum purports to have been made 6-15-1935, on "6-15-35." That indicates that you had some talk with Mr. Culver about the matter. What was that? A. That is Mr. Moeckel's writing. I am trying to recall. This isn't my writing. I will have to suppose an answer to that, if you want me to.

The Special Master: No, don't tell us if you don't know.

Q.28. (By Senator Hollingsworth) Did you talk with Mr. Culver about it in June of 1935? A. I may have. I don't recall. If I did talk to him it was for the purpose—the fact it was a suspense item on our Eastern Department books, and may have asked if we could get it cleaned up.

Q.29. The check was written May 2, 1935, and this memorandum is dated June 15, 1935, and at that time there had been nothing done about charging or getting that money back from the Western Department, had there? A. I don't believe so.

Q.30. All right. "Mr. Culver says bring up September 1," so it was laid over until September 1st, wasn't it? A. Yes.

Q.31. And nothing was done? A. Nothing done to get it back, no.

Q.32. Now, Mr. Emes, whose handwriting is this? A. That is Moeckel's.

Q.33. That is Moeckel's? A. Yes.

Q.34. Mr. Moeckel testified that after a conference with you in December, December 18, 1935 "the $15,000.00 advanced to Mr. Street for legal expenses will eventually be returned to us but not before the end of the year." A. Yes.

Q.35. So you knew then that you were not going to get it cleared up before the end of the year unless you did bill the department, the Western Department, without further investigation? A. Yes.

Q.36. You didn't bill the Western Department, did you? A. No.

Q.37. Why didn't you? A. There was no need for it, no necessity for it.

Q.38. The end of the year was coming? A. That was to clear our books at the end of the year.

Q.39. They were not cleared, were they? A. I don't know.

Q.40. It says it will not be paid back before the end of the year. A. I don't recall whether it was paid back or not, but if you say it wasn't, probably so.

Q.41. Mr. Culver did not want the Western Department billed for this item, you gave Mr. Moeckel that information, didn't you? A. I don't know the meaning of that. It means nothing to my mind, "Mr. Culver did not want the Western Department billed for this item."

Q.42. "And in order to handle it over the end of the year, Mr. Culver had Mr. Henne forward Missouri premiums for a basis of apportionment." Now, the fact was you couldn't apportion it among your companies, could you, because you didn't have sufficient information? A. No, and I don't believe we could have apportioned it at the end of the year.

Q.43. And you didn't want to bill the Western Department for some reason, did you? A. I don't know of any particular reason. It wasn't of enough importance to bill them then or at any other time.

The Special Master: Here is the proposition, the witness just before you said that he would have, as a matter of course, billed them for it except that he had gotten instructions from you not to do it because Mr. Culver didn't want it done. That is what we are trying to explain. Is that true? Do you deny that you gave him any such information?

A. No, I don't.

The Special Master: Then do you have any idea why you did?

A. Simply as I say, it was of no immediate importance whether they cleaned that thing up in June, July or December.

The Special Master: That would be a perfect explanation of why it was neglected. It is no explanation to know why the man who would have done it otherwise was instructed not to do so. The matter was not neglected. There was affirmative action, according to the other witness' testimony, to keep it from being done.

A. I don't know of any particular reason at this time unless not to upset the books. There was no reason why it shouldn't have been done or postponed.

Q.44. (By Senator Hollingsworth) The books were upset by its not being done, weren't they? A. The books were upset to the extent that we had an open suspense item on the Eastern Department books that we eventually wanted to get off.

The Special Master: Well, according to the other witness, though, he would have straightened that matter out forthwith except that he got instructions from you not to do so.

A. That may be true. I don't recall any particular reason for saying it or giving it. As I say, there was nothing important in my mind at that time or this time.

The Special Master: Now, let me call your attention to this. The figures to make the proper allocation were in the Western Department?

A. Right.

The Special Master: They were not here?

A. That is right.

The Special Master: And if you held it here, that would require you to send out to Chicago to get figures in order to make an allocation here, whereas if you charged it to them, it could have been tended to without getting those figures?

A. That is right, if we cared to make in our case the allocation at that time.

The Special Master: According to the instructions you were to go to Chicago in order to make the allocation?

A. Were those instructions, Mr. Barnett, as to the $15,000.00 or as to the total of all of them? I think that is where this confusion is.

Senator Hollingsworth: This (indicating) says the $15,000.00.

The Special Master: There it is.

A. Yes, that is the advance, but the instructions as to the final split up was as to the whole $37,000.00, not the $15,000.00.

Q.45. (By Senator Hollingsworth) I know, but this was in 1935 and you hadn't received the remainder at that time. You didn't receive any more. You hadn't received anything. A. From the West?

Q.46. From the West or anywhere.

The Special Master: Or any place else.

A. That is right.

Q.47. (By Senator Hollingsworth) You didn't receive any money until March, 1936. You never received another assessment until March of 1936. A. Well, then, as I recall it, we took that $15,000.00 and split it between two companies until such time as we could get some allocation.

The Special Master: Why did you want to make the allocation at all? The Western Department was the proper place to make the allocation. It was a proper charge, and they had the figures.

A. Yes, but the Western Department is only a subsidiary, it finally comes to the home office.

The Special Master: Only in monthly reports.

A. But they go into the final figures.

The Special Master: Certainly when you make your final annual statement, but we are trying to find out if you know first whether or not you did tell them not to charge that to the Western Department, and if so, why. Now, it is obvious if you didn't make the allocation you had to go to a lot of trouble and send out west—

A. (Interrupting) Not in that particular year. This $15,000.00 I am trying to make clear, had no particular importance except we had a suspense item on our books and would have liked to have it cleaned off. Whether we cleaned it off or not made no particular difference.

The Special Master: But the evidence is that the affirmative action was made to keep from cleaning it off. That is what he is asking you about. Do you remember anything about that?

A. No, I don't.

The Special Master: If you can't remember it, then you can't offer an explanation of it.

A. No.

Q.48. (By Senator Hollingsworth) Then let me see if this would refresh your recollection: "It has been decided to let the charge rest with the Continental and

Fidelity-Phenix on a 50-50 basis." A. Well, that is for the $15,000.00.

Q.49. "To be charged to General Expense." A. That is for the $15,000.00.

Q.50. Why was it that you deliberately refrained from billing the Western Department during the year of 1935, which would have kept your books regular? A. That billing in that year would simply have removed a suspense item from our books, and given us no final figure that we could allocate, because we had no basis to allocate on. We had no basis until 1936 or some later year.

The Special Master: You never did get that basis?

A. Yes, we got it. When we got the final 5 per cent figure, that $15,000.00 plus the other $22,000.00 was spread across the board among the companies.

The Special Master: You didn't know you were going to get that when you did that. That came out of a settlement. There had been no settlement made at the time you paid the $15,000.00.

A. That is right, and to be fair and just to the companies, we split it on a fifty-fifty basis, charging the two parent companies $7,500.00 in the year 1935.

The Special Master: So far as you knew at that time, you would never get that money back?

A. No. I really didn't know anything about getting any money back.

The Special Master: All they are trying to find out from you is why affirmative action was taken not to charge that to the Western Department in that year.

A. Well, I can only say again, the fact that it was of no importance at this time or that time, it meant nothing whether we charged the Western Department or not because eventually it would come to the home office, and we would make it a proper charge. You remember, we handle the annual statement in the home office. We make the split among the items in the home office. I am trying to make it clear. There is absolutely no thought or knowledge in my mind of any reason for not putting it on the books at that time except it would probably make it easier to hold it over.

Q.51. Now, at the time you made the advancement, that was on May 2, 1935, you couldn't allocate it then, could you? A. No.

Q.52. It was brought up again on June 15, 1935, according to a memorandum which says "Mr. Culver says

bring up September 1." So you couldn't do anything with it then? A. No.

Q.53. Now, if Mr. Culver instructed that it be brought up September 1st, it was of some importance, wasn't it? A. Well, it was of importance that Mr. Moeckel wanted to try and clear his books. That is the importance of it.

Q.54. Now, Mr. Moeckel brought it up in September, 1935? A. What was done I don't know. He was probably told to let it go for a while longer.

Q.55. Told to let it go for a while longer. Then on 12-18-1935, Mr. Moeckel testified that he talked with you again. A. Yes.

Q.56. And then he made this memorandum in which it is said that "Mr. Culver did not want the Western Department billed for this item." Now, did Mr. Culver tell you that? A. I don't recall, but my answer to that is probably no.

Q.57. Mr. Culver didn't tell you that? A. I don't think so.

Q.58. Why, then, did you tell Moeckel that Mr. Culver—you didn't deliberately tell Moeckel something which wasn't true? A. No, that is true.

Q.59. Then why did you tell Moeckel, if it is your impression now that Mr. Culver didn't tell you that? A. My answer to that is that it was in line with previous conversation to wait until we could get some proper figures to split the thing on.

Q.60. Well, why couldn't you get the proper figures right now? Why did you want to hold it over until the end of the year? A. There was no way of telling any proper figures in the year 1935.

Q.61. All you would have had to have done was to bill the Western Department, or at least write them. Why did you want to hold it over? A. If we had billed the Western Department they would have advanced us $15,000.00 and they would have had an open item on their books which they couldn't allocate any more than we could.

Q.62. Why did you want to hold it over beyond the end of the year, if you thought it was contingent on something else, why didn't you say until something else happened? I get the idea that you wanted to hold it over beyond the end of the year for some specific purpose. A. There is no specific purpose in my mind at all, except to—I don't know why I can't make that clear.

The Special Master: No, you haven't even begun to make it clear. If you don't know, the best thing to say is that you don't know.

A. I don't recall those conversations at all. If we had any of those conversations—

Q.63. (By Senator Hollingsworth) On the very day that this check was issued, the $15,000.00, did you know that Mr. Culver attended a meeting here in this office? A. No.

Q.64. He never told you that? A. No. I think I testified that he told me he had had a telephone call from Mr. Haid.

Senator Hollingsworth: I think that is all.

Cross Examination by Mr. Bullitt.

XQ.65. What is your position with this Continental group? A. Comptroller.

XQ.66. In the ordinary course of routine business, where you have all of the supporting documents, who allocates the various disbursements and receipts to their respective bookkeeping accounts? A. In the home office final accounting is done from Mr. Moeckel.

XQ.67. With respect to this $15,000.00 that was paid out on May 2, 1935, who directed the payment to be made? A. Mr. Culver.

XQ.68. He is the president of all of the companies, isn't he? A. That is right.

XQ.69. He directed the payment to be made? A. Right.

XQ.70. In whose handwriting, if you know, is this memorandum (indicating)? A. That is mine.

XQ.71. "Charles R. Street, Chairman, $15,000.00, Missouri legal expense." A. That is mine.

The Special Master: Tell the stenographer what exhibit you are referring to, will you?

Mr. Bullitt: That is on Defendants' 198.

A. Yes, that is mine down to this point here (indicating).

XQ.72. (By Mr. Bullitt) Who gave you the directions that it was "Charles R. Street, Chairman, $15,000.00, Missouri legal expense"? A. Culver.

XQ.73. Now, then, as he ordered the payment of the $15,000.00 for Missouri legal expense, who was the person to tell how that should be charged as between the different companies? A. Why, that is a matter of

contract among our companies. We have a premium basis contract that determines those expenses.

XQ.74. Who is to determine the basis on which expenses should be allocated? Was it on premium basis or on what other kind of a basis? A. I will have to say again, it is a matter of contract. We have a joint expense contract among the companies that allocates expenses on premium basis.

XQ.75. Did that cover this kind of an expense or not? A. Yes.

XQ.76. Then why was it that you did not then allocate the $15,000.00 between the various companies on the basis of their premiums? A. I don't think we thought it of enough importance to do that at that particular time. If we did we would have allocated it on some premium basis, but I don't think we knew any premium basis at that time.

XQ.77. Of course, you did know the premium basis of prior years of the four companies—or six companies. You knew that, didn't you? A. Yes.

XQ.78. So that if the allocation was to be made according to a premium basis, you did have the data, if you chose to use it? A. That would have been allocated on the current year premium income.

XQ.79. Does the contract require that a $15,000.00 expenditure on account of Missouri rate litigation covering impoundings up to—prior to May 1, 1935, should be allocated according to the 1935 premiums? A. Under the contract it would have been allocated on the current year's premium income, which would have been determined at the end of 1935.

XQ.80. Then under the contract of allocation, you couldn't have possibly allocated the $15,000.00 until after December 1, 1935, is that right? A. That is right.

XQ.81. So that is the $15,000.00 that Mr. Culver directed to be paid to Mr. Street for legal expenses, I say if that was to be allocated between the companies according to the contract between the companies, you couldn't possibly do it until after December 31, 1935, is that right? A. In fact, yes, that is right.

XQ.82. Then, now, isn't that the reason that you didn't? A. No, it isn't.

XQ.83. Just wait a minute. If you couldn't do it until after December 31, 1935, why isn't that the reason you didn't do it? A. It was automatic in the fact that the Continental had paid it and would have followed out at the end of the year.

XQ.84. I understand that, but you couldn't have possibly allocated it until after December 31, 1935. A. Not unless we made a forced allocation.

XQ.85. That is what I say, so that there was nothing unusual in holding it over until December 31, 1935, was there? A. No, and furthermore, we charged it to an item called "General expense," I believe, at the end of the year, if I recall correctly it was "General expense," and that item is allocated and split as of the year's premiums.

XQ.86. Ultimately you generalized the whole thing? A. Yes.

XQ.87. And allocated it around to the different companies?

The Special Master: As a home office expense, they never did allocate it, either, that year?

A. They finally charged it to the proper department and left it up to them how it would be charged, but in 1935 it must have been on the General expense.

The Special Master: Oh, yes, sure, which wasn't an allocation at all, just a makeshift?

A. Yes. It was a temporary entry until we finally removed it.

XQ.88. (By Mr. Bullitt) Did you finally allocate it among the various companies? A. Yes, with the final other $22,000.00 it was split among the companies on the Missouri impounded premium basis.

The Special Master: You had that credit removed from your home office books before that other money ever came in? You had already charged your Western Department and they had sent it back and you had given the Continental and the Fidelity-Phenix—

A. (Interrupting) We charged the $7,500.00 back in the home office.

The Special Master: And wiped that all out before this other money came in?

A. That is on the home office books.

The Special Master: That is what I am talking about.

A. Yes.

XQ.89. (By Mr. Bullitt) But wasn't that $15,000.00, together with the subsequent receipts in and payments out, allocated among the various companies in your group according to the premium basis required by the contract between them? A. For the year 1935 it was later on when the proper payments were made. I think now, according to that, it took care of itself. I would have to think about it.

Mr. Bullitt: I now offer in evidence the following correspondence, dated respectively March 21, 1936, March 30, 1936, April 1, April 16, April 20, September 25, and October 29, 1936.

(Whereupon, discussion was had off the record during which it was decided all of said correspondence had been offered in evidence except letter of April 20, 1936, from Burt W. Jones to B. M. Culver, President, which said letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 203, EFM.")

Judge Henson: I offer in evidence Defendants' Exhibit 203.

(Which said Defendants' Exhibit 203, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

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"America Fore"

THE CONTINENTAL INSURANCE COMPANY
NIAGARA FIRE INSURANCE COMPANY
FIRST AMERICAN FIRE INSURANCE COMPANY
FIDELITY-PHENIX FIRE INSURANCE COMPANY
AMERICAN EAGLE FIRE INSURANCE COMPANY
MARYLAND INSURANCE COMPANY OF DELAWARE

ERNEST STURM Chairman of the Boards
BERNARD M. CULVER, President

WESTERN DEPARTMENTS
844 RUSH STREET, CHICAGO
E. A. HENNE Vice Pres. Cor.

April 30, 1936

Mr. B. M. Culver, President,
New York Office.

Dear Mr. Culver:

In the absence of Vice President Henne, Miss McCormick, his secretary, has referred to me for attention your letter of April 16 with reference to the payments made by the Home Office amounting to $37,323.12 for legal expenses in connection with the Missouri Rate Case.

In accordance with your suggestion we are enclosing herewith Continental Insurance Company check payable to the company for the amount referred to. This payment represents five per cent of the impounded premiums up to and including April 30, 1935 and is divided among the five companies on the following basis:

Continental	$ 14,326.42
Fidelity-Phenix	16,834.59
Niagara	2,498.29
American Eagle	3,360.28
First American	1,303.54
	$ 37,323.12

The companies listed above are reimbursing the Continental for the amounts mentioned.

Yours very truly,

J Bertwhone

Assistant Auditor

XQ.90. (By Mr. Bullitt) Was there any reason that you know of other than mere convenience of accounting, for holding the $15,000.00 in suspense over December 31, 1935, until the Missouri rate litigation was apparently cleaned up by the compromise and the receipts in, most of the receipts in and expenses paid? A. There was no reason at all.

The Special Master: Obviously, there was no reason. If there was some other reason, maybe Mr. Culver knows, but it was not bookkeeping reason.

A. No, I really think, Mr. Barnett, it is hard, but we simply let that thing drift.

The Special Master: I know. You don't know it, and I am not blaming you.

XQ.91. (By Mr. Bullitt) Mr. Emes, it could have been done either way with equal fidelity to correct accounting? A. I was just thinking for a minute, if we transferred that to the Western Department, we would have probably had them with an open suspense item on their books the same as we did.

The Special Master: That is what you finally did?

A. We got it out of our books.

XQ.92. (By Mr. Bullitt) Isn't the Western Department, after all a mere convenient designation of your business in Chicago which, at last, has to be carried on the home office books in New York? A. Yes, and further than that the Western Department handled the State of Missouri, and they make the particular office split of expenses applicable to various states in those various branch offices.

The Special Master: That is right. It starts there and not here.

A. Yes, and ends there, but if the procedure is reversed, in many instances we have a business at the home office, like through the pooling arrangements that is shifted by us to the branch office.

The Special Master: Except for the fact of getting all of the business in one final annual statement, those bookkeeping transactions are, in fact, kept out there at Chicago, aren't they, for the Missouri business?

A. Yes.

Mr. Bullitt: That is all.

The Special Master: That is all.

(Witness excused.)

CECIL F. SHALLCROSS, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. What company are you associated with? A. I am United States Manager for the North British & Mercantile Insurance Company, and president of the Commonwealth Insurance Company of New York, the Homeland Insurance Company, the Mercantile Insurance Company of America, and the Pennsylvania Fire Insurance Company of Philadelphia.

Q.2. Were any of those companies connected with the federal court rate litigation in Missouri that was pending from 1930 to 1936, I believe? A. No.

Q.3. Did you attend a meeting here in New York City on or about May 2, 1935? A. No.

Q.4. Relating to the rate litigation, which was held in this office, Mr. Haid's office? A. I was in London on that date.

Q.5. Did you attend any meetings with insurance executives or attorneys in which this litigation was discussed? A. At what period of time?

Q.6. Oh, from January 1, 1935, until June 1, 1936. A. No.

Q.7. I hand you Defendants' Exhibit 86, or a copy of it, and ask you if you received a copy of that telegram from Mr. Koop or any other person.

The Special Master: What is the purpose of this testimony?

Mr. Holman: He is referred to in the telegram, and we want to straighten it out.

Senator Hollingsworth: I can state in a telegram that went out to the men whom I understood to be "big boys" Mr. Shallcross' name was mentioned, and that led me to believe that he had attended the New York meeting.

The Special Master: Well, he said he didn't, and nobody else that attended that meeting said he did.

Senator Hollingsworth: He said he did not.

Mr. Bullitt: He was in the state court and never contributed anything to Mr. Street and had nothing to do with the federal court.

Senator Hollingsworth: That referred, now—

The Special Master: That is all right to ask him.

Senator Hollingsworth: I think that ends it up, but I was responsible for calling him.

Q.8. (By Mr. Holman) Did you receive a copy of that telegram? A. I did not receive a copy of it.

Q.9. Did you ever see a copy? A. I never knew of the existence of this telegram until I saw what happened to be a copy in the newspapers this morning and I went to my secretary and asked if there was such a telegram. He found it for me and this morning is the first time I ever saw it because, as I tell you, I was abroad at the time that was received.

Q.10. Did Mr. Street or the Actuarial Committee or anyone else discuss this compromise with you prior to the time it was made in May, 1935? A. At no time. I wasn't interested in it.

Q.11. You know nothing about it? A. No, sir.

Q.12. Or the events leading up to it? A. No.

Mr. Holman: That is all.

(Witness excused.)

The Special Master: We will adjourn until ten o'clock tomorrow.

Whereupon, the further taking of testimony in said case was adjourned until ten o'clock a. m. of Friday, August 4, 1939.

MORNING SESSION, FRIDAY, AUGUST 4, 1939.

Pursuant to adjournment as aforesaid, at ten o'clock a. m. of said Friday, August 4, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

The Special Master: Are we ready to proceed?

Senator Hollingsworth: Yes.

F. W. MAASEN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Mr. Maasen, you live here in New York? A. That is right.

Q.2. What is your connection with the London Assurance Corporation group? A. I am the auditor.

Q.3. You were the auditor in 1935 and 1936? A. That is correct.

Q.4. Did you know anything of this compromise prior to the time Mr. Erskine called on you?

The Special Master: Tell him what compromise you are talking about.

Q.5. I am talking about the compromise of the rate case in Missouri? A. No, I did not.

Q.6. Do you recall that Mr. Erskine called on you about April 2, 1936, and delivered a check for a part of the impounded premiums? A. I do.

Q.7. That was 11 per cent of the impounded premiums? A. It was, yes.

Q.8. And what did he say to you when he came there and delivered that check? A. Why, he said this was a refund of the 30 per cent; I think they withheld 30 per cent for legal expenses, and he said, "This is a reimbursement of the 11 per cent of the 30 withheld," at which time he requested a check for 5 per cent of the impoundings.

Q.9. Who was present at that conversation between yourself and Mr. Erskine? A. Mr. Erskine called into my office and I phoned him to see whether the manager was in at the time and he was so I brought Mr. Erskine in Mr. Nourse's presence.

Q.10. Then you were all three present? A. Yes.

Q.11. It was there that you got all of the information that you got from Mr. Erskine? A. That is right.

Q.12. Now, at the time that he gave you the 11 per cent and requested the 5 per cent check, just tell everything that he said? A. Why, there wasn't a long conversation that took place. All he said was that this was 11 per cent of the impoundings and he would like to have a check for 5 per cent of the impoundings.

Q.13. What did he say the 5 per cent was for? A. He didn't make any statement that I recall.

Q.14. Well, did you ask him? A. No, I did not.

Q.15. Did Mr. Nourse ask him? A. Not that I recall.

Q.16. And you gave him a check for 5 per cent of the total of your impounded premiums? A. That is right; Mr. Nourse instructed me to take care of it and I went out to the cashier and had the check drawn.

Q.17. Without any information as to what it was to be used for? A. That is right.

Q.18. He didn't tell you a thing about the purpose of it? A. That is right.

Q.19. Nor didn't tell Mr. Nourse that? A. Not that I recall, no.

Q.20. And you wrote the check without having any idea at all as to what it was for? A. That is right.

Q.21. And so far as you know Mr. Nourse didn't know what it was for? A. That is right.

Q.22. Mr. Nourse had no conversation with Mr. Erskine there that you didn't hear? A. Unless he had the conversation while I was having the check drawn. I left the room for a few minutes to go to the cashier to have the check drawn.

The Special Master: But he had already said to write the check before you left?

A. Yes, he had put the stamp of approval on the drawing of the check, that is right.

Q.23. (By Senator Hollingsworth) Did it appear to you there that Mr. Erskine had had some prior conversation? A. No, it did not.

Q.24. From what you saw and heard there, Mr. Nourse, at the time he ordered you to draw the check had no more information than you had? A. That is correct.

Q.25. Did you get any idea or impression that the purpose of the check was not mentioned with the view in mind of not discussing it at all? A. No, I did not.

Q.26. You had nothing to do with the wording of it, you simply heard the conversation and Mr. Nourse gave you the order? A. Mr. Nourse approved the payment and I went out to the cashier and had him draw the check.

Q.27. When he approved it that was final so far as you were concerned? A. So far as I was concerned, that is correct.

Senator Hollingsworth: That is all.

General Bullitt: You haven't introduced the check, have you?

Senator Hollingsworth: Yes.

A. Yes, it has been marked and I am quite positive it was introduced.

Cross Examination by General Bullitt.

XQ.28. Look at Exhibit Defendants' 160. Did Mr. Erskine tell you what the 5 per cent check back to Street was for? Where did you get the information that appears on the face of that check, that it was for legal expenses? A. Why, I considered it a readjustment or reapportionment of the legal expenses.

XQ.29. What was it that gave you that impression or that judgment that you recorded on that check if Mr.

Erskine didn't say anything whatever about what the 5 per cent was for? A. Why, it didn't occur to me to ask him. I just assumed it was the readjustment of the 11 per cent that was refunded which was originally intended to bring it down from 30 per cent to 19 and finally decided to make it 24 per cent; that is what was in my mind.

General Bullitt: That is all.

The Special Master: You didn't authorize the check, of course?

A. I did not.

The Special Master: You only drew it because you were told to?

A. By Mr. Nourse, right.

The Special Master: It wouldn't have made any difference what it was for, if he had told you to draw it you would have drawn it?

A. As a rule I follow instructions from my superior officer.

The Special Master: It wasn't your function to pass upon the propriety of the thing?

A. That is right.

The Special Master: But you did try to figure out what it was for and record it without getting any information at all?

A. Why, I found out that the check we received was 11 per cent, and I took that precaution for my own information and then when it was 5 per cent, the refund, I assumed it was in connection with the same matter, and I so recorded it on our books, told the cashier to consider that an adjustment of legal expenses.

The Special Master: But you really didn't know anything about it?

A. No.

The Special Master: Now that you look back, can you think of any reason why you didn't ask?

A. No, it didn't occur to me at the time being; it was in connection with the 30 per cent impounded premiums that were withheld for legal expenses and the refund was predicated on the same proposition of reducing the 30 per cent to 19 per cent. I assumed that the 5 per cent was in connection with the legal expenses.

The Special Master: You just thought you understood it?

A. That is correct.

The Special Master: That is all.

(Witness excused.)

J. D. ERSKINE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. You are Mr. J. D. Erskine? A. Yes, sir.

Q.2. What is your association with Mr. Paul Haid? A. I am secretary of the Insurance Executives' Association.

Q.3. What is his position? A. He is president of the Insurance Executives' Association.

Q.4. Mr. Erskine was that the position that you held and Mr. Haid held with the Insurance Executives' Association in the years 1935 and 1936? A. Yes, sir.

Q.5. You knew something in a general way, I suppose, about the Missouri rate controversy that is pending in the federal courts out there by a number of fire insurance companies, probably at times more than 137 companies. You knew in a general way about that, did you? A. Yes, sir, I had followed the newspaper reports since 1922, I guess.

Q.6. Well, coming to the controversy that was then pending, starting in June, 1930, assuming that to be true, and involving the sixteen and two-thirds percent increase, now, were you familiar in a general way with that case? A. In a very general way, yes, sir.

Q.7. What connection, if any, did the Insurance Executives' Association have with it? A. I should say none.

Q.8. Did you ever hear talk of compromising that controversy? A. Yes, sir.

Q.9. About when was the first you heard about that? A. In the spring of 1935.

Q.10. With reference to May, 1935, when there was a meeting here in Mr. Haid's office, with reference to that date, how long before that date had you some information of some efforts, if you had any, as to a compromise? A. I had none before that date.

Q.11. There was a meeting in Mr. Haid's office with a number of the executives on May 2, 1935, wasn't there? A. I couldn't say as to the date, but there was a meeting in May, 1935.

Q.12. Had you any knowledge before the meeting was called that it would be called, and if so, how long before? A. I had no knowledge before. I had knowledge soon after.

Q.13. Did you know the meeting was going on when it was in session here? A. No, sir.

Q.14. Do you recall whether Charles R. Street of Chicago, chairman of the Subscribers' Actuarial Committee, was here attending that meeting? A. Yes, he was.

Q.15. And whatever date that meeting was, that was the meeting that I am talking about, and that is the meeting you understand? A. I think we are referring to the same thing, yes, sir.

Q.16. Now, can you recall the names of any others who attended that meeting? A. No, I can't. I don't know who were there.

Q.17. When did you first hear about the meeting, after the meeting or while it was in session? A. No, sir, it was after the meeting and it was either immediately after the meeting or I should judge within another day or two. It was soon after the meeting.

Q.18. Did you have any information that Mr. Street was coming into New York prior to the meeting? A. No, sir, I was told that Mr. Street had come to New York to attend such a meeting.

Q.19. Then I assume that you had nothing to do with giving the notice to the executives to come into the meeting? A. I have no recollection of having done so. In fact, I am quite sure that I had no information about the meeting.

Q.20. Who, if you know, did summon the men into that meeting? A. I believe Mr. Haid did.

Q.21. Now, did you see Mr. Street after the meeting on the same day the meeting was held? A. I don't think I saw Mr. Street at all.

Q.22. At least, if you did, you didn't talk to him? A. No, sir.

Q.23. Did anyone else of your office, so far as you know, talk to Mr. Street except Mr. Haid? A. I don't believe so.

Q.24. Now, tell me what the first information you did receive regarding that was, and what that information was.

The Special Master: Are you still talking about the meeting in 1935?

Judge Henson: Yes, the meeting of May 2, 1935.

A. Why shortly after the meeting, either that same day or within, I should judge, another day or two, Mr. Haid told me that Mr. Street had come East to discuss

with a number of executives the subject of settlement of the Missouri rate case.

Q.25. All right, go right ahead. Tell us anything else you said. A. And that Mr. Street had made arrangements to collect a sum of money that would be needed in connection with the expenses thereof.

Q.26. Did he indicate what sum of money that was? A. No, sir.

Q.27. Did he tell you what the sum of money was for? A. Only in the terms that I have just stated.

Q.28. Well, have you stated all that he said then? A. Yes, sir.

Q.29. Just that it was necessary to collect a sum of money?

The Special Master: That he had made arrangements to collect a sum of money.

Q.30. (By Judge Henson) Now, did Mr. Haid tell you that that was the arrangement made at the meeting or that Mr. Street had made them? A. I don't think Mr. Haid made any additional comments, none that I recall, to me.

Q.31. I will ask you whether you went out of town with Mr. Street after he left New York for Hartford, assuming that he did go to Hartford? Did you go to Hartford with Mr. Street? A. No, sir.

Q.32. Did Mr. Haid? A. I never knew that he did.

Q.33. Now, did you have anything to do with going out and bringing in any of the checks that would make up this sum of money which Mr. Haid said Mr. Street had arranged to get? A. No, sir.

Mr. Berger: You are speaking of the 1935 meeting?

Judge Henson: Yes, I am still on that. I am trying to keep out any confusion.

Mr. Bullitt: He answered that.

A. My answer was no.

Q.34. (By Judge Henson) I had the impression that it was in the testimony that you went over and got the Continental check on that occasion, May 2, 1935, am I wrong about that? I am entirely willing to take your word about it. A. I have no recollection of it, sir.

Q.35. Did you hear anything about the Hartford meeting, presumably held the next day? A. No, sir.

Q.36. Did you hear any report from that? A. No.

Q.37. Did you ever, after the meeting of the executives in Mr. Haid's office on May 2, 1935, hear the definite sum of money that Mr. Haid expected to collect?

A. No, I never heard that sum. In a way or in a sense, I have some idea of what that sum was, but it came about in an entirely different manner and many months later.

Q.38. Well, that is what I am getting at. How long after that was it that you got that information? A. Oh, I think it was just about a year.

Q.39. And how much money was that, as you heard it, about a year later? A. Well, I didn't hear it, sir.

Q.40. Just tell us how you got the impression. A. It was a matter of—

The Special Master: Calculation?

A. Calculation on my part, when we were making credits applied to sums of money that we were collecting on the 5 per cent.

Q.41. (By Judge Henson) At that time the 5 per cent collections made something like a year later were credited with the advances made out? A. The payments that had been previously made.

Q.42. Yes, and in that way you found out? A. That some such moneys had been paid in.

Q.43. About what was that sum? A. I don't believe I could answer except in a very round number, and I am sure that it would only be an approximation.

Q.44. Well, state whether Mr. Haid ever told you the amount of money raised at the Haid meeting? A. He never did, no, sir.

Q.45. Did Mr. Street ever tell you? A. No, sir, I never had any conversations.

Q.46. May I infer from your other answers that no one else ever told you? A. No, sir.

Q.47. And you got this information a year later? A. Yes, sir.

Q.48. Now, getting down to the incidents of March, 1936, what, if anything, did you have to do with bringing in the 5 per cent, as you called it a while ago? Just tell us in a general way what you had. A. Why, I called upon a number of the officers. Mr. Haid called me into his office and had on his desk a pile of checks which represented an 11 per cent payment.

The Special Master: To various companies?

A. To various companies. He also had a lengthy list of those companies, with the amounts of the refund opposite the names of the companies. He stated that he was called upon to make this distribution.

Q.49. (By Judge Henson) Did he say who called on him to make this distribution? A. Yes, sir, he said that Mr. Street had requested his services in making this distribution. We considered, after looking over this list which covered, I should say, a page and a half of legal size paper, we conceded that it would help materially if the companies were grouped, and we proceeded to do that. I should say I proceeded to do that at Mr. Haid's suggestion.

The Special Master: In other words, so that when you went to one man you would call on him for every company that he represented?

A. Right.

Q.50. (By Judge Henson) Who requested you then to call on the various groups? A. Mr. Haid asked me to do that.

Q.51. What did he tell you to tell these groups? A. Mr. Haid gave me to understand that Mr. Street had requested the services of this office to make this distribution, and at the same time to collect an amount from the companies receiving the 11 per cent check.

Q.52. What amount?

Mr. Bullitt: Just let him finish.

A. 5 per cent of their impounded premiums.

Q.53. (By Judge Henson) Did he give you any other explanation regarding the 5 per cent which you could convey to the insurance men whom you might visit? A. I think I asked him how the amount was to be charged by the companies, and his reply was that it was for legal expenses in connection with the Missouri rate settlement.

Q.54. Did I understand you to say that he told you to tell each of them that? A. Those were the general instructions he gave me, yes, sir.

Q.55. Did Mr. Haid at that time explain to you what this originally raised sum in 1935 was for or what regard you should have for it? Was that to be a credit? A. Will you repeat that question?

Q.56. I will put it in better form. State whether or not Mr. Haid gave you a list of the companies making the contributions in 1935. A. No, sir, he didn't, but maybe I didn't make my explanation explicit. In making this grouping of the companies, it showed the total impounded premiums. My recollection is it showed the 11 per cent of the impounded premiums and also the 5 per cent of the impounded premiums. As for the credits

that were to be allowed for previous payments, my recollection is that Mr. Haid made notations of what those payments were, what those credits were, and those were attached and given to those companies that had made such payments.

Q.57. And that was, of course, the first time you knew of the previous payments these companies had made? A. Yes, sir.

Q.58. And you never have learned the purpose for which they were made, practically a year before? A. I was told that it was for legal expenses.

Q.59. Now, can you recall in a general way how many of these companies had offices here in New York City so that you just went out and visited the offices? A. Do you mean, sir, of those that I called upon?

Q.60. Yes, sir. A. Why, I should judge that I may have called upon fifteen or eighteen of the local offices, and I was in telephone communication with a few out of town offices.

Q.61. Can you name some of the out of town offices with whom you communicated? A. Yes, sir, the Glens Falls, the Agricultural—

Q.62. (Interrupting) That is at Watertown? A. Of Watertown, New York, the Boston, the Springfield, I don't recall whether I communicated with the New Hampshire or not.

Q.63. Did you communicate with some of these at Camden and Newark, New Jersey and Philadelphia? A. I didn't communicate with any in Philadelphia and I didn't communicate with Camden, no, sir.

Q.64. Please tell us why you didn't write letters to these companies which you have named and which you say you called by telephone. A. Why, I think that was primarily because the element of time seemed to be involved in this matter, sir.

Q.65. Mr. Haid was in a hurry for the checks, or Mr. Street was, as you understood it? A. Well, the truth is that I probably took more time in preparing this list than perhaps seemed necessary.

Q.66. How long do you think you took in preparing the list? A. It might have been two or three days. It was a considerable job. Some of these companies, for instance, had gone out of existence and one or two others had been merged. It required some care in preparing it.

Q.67. Now, is that the only reason that you know of as to why they were in a hurry to get the checks so that

you had to telephone for them? A. Well, I have a distinct recollection that Mr. Haid pressed me on this job before I had finished the list.

Q.68. Didn't Mr. Haid tell you that Mr. Street was in a hurry for this fund? A. I don't recall whether he told me that, but I distinctly gathered that impression.

Q.69. Now, I don't care to go through the conversation, each telephone conversation, but in a general way what would you say on the telephone to the individual reached? A. Why, I think that I recall that my telephone conversations were pretty much of a pattern. I repeated just about the information that Mr. Haid had given to me.

Q.70. Just tell us, though, what that was. A. Specifically that Mr. Street had requested the services of our office in making this distribution and collection, that we were mailing him, mailing the person I was addressing, a check that evening which amounted to 11 per cent of the impounded premiums, and I requested in return that a check be made out to Mr. C. R. Street, Agent, for 5 per cent of the impounded premiums.

Q.71. That was substantially what you told each individual you called on in your own city here too, I suppose? A. Substantially that. Some of our conversations were naturally amplified into personal conversations.

Q.72. Did you go out and visit any companies whose offices are not in New York. You have told about the telephone— A. (Interrupting) No, I did not.

Q.73. You didn't go out and visit any of them? A. No, sir.

Q.74. Did Mr. Haid visit some of them? A. I believe he did.

Q.75. Have you any original memoranda in your office or in your files as to the list which was prepared for you to use, the list that you have described that took maybe two or three days to prepare? Have you some of that in your files which could be produced here? A. I think that that original list is in the file.

Q.76. Now, in calling on these men, even on the telephone and making your personal calls here in New York, naturally conversation would vary as it would with men? A. Yes, sir.

Q.77. It is a fact, isn't it, that some of them never even asked you any particulars about what the 5 per cent was for, but just made it because they said Mr.

Street wanted it? A. I think that in—I should say that in nearly every instance I mentioned that it was for legal expenses.

Q.78. But, if the party you interviewed didn't ask you, you never took any pains to tell them, isn't that true? A. My recollection is that I did mention that it was for legal expenses.

Q.79. Did you tell any of them what particular legal expense it was? A. No, sir.

Q.80. Did you know anything about what legal expense it was? A. No, sir.

Q.81. I guess you didn't know anything about the fact that 30 per cent was set out for legal expenses and that this 11 per cent check was out of the 30 at that time? A. I did know what the allocation was. I knew that there was the 50 and the 30 and the 20 allocation.

Q.82. Well, what did you know; what was your knowledge as to what the 30 was for, the 30 per cent? A. I understood that that was for legal expenses.

Q.83. And then you were out asking for checks for 5 per cent for more legal expenses? A. Yes, sir.

Q.84. Did you ask Mr. Haid to explain that to you so that you could answer the inquirers who might inquire of you? A. No, sir.

Q.85. You got no explanation from him? A. No, sir.

Q.86. And, therefore, you had none that you could give to the man interviewed except that it was legal expense? A. That is right.

Q.87. That is all you did tell him? A. Yes, sir.

Q.88. And you didn't tell them that much unless it was required if I understand you?

Mr. Bullitt: No, he didn't say that.

The Special Master: No, he said to the contrary. He said his recollection was that he always told everybody that it was legal expense.

Mr. Bullitt: Whether it was asked for or not, he just told them.

Cross Examination by Mr. Bullitt.

XQ.89. Does this Insurance Executives' Association have anything to do with rates or litigation anywhere in the United States? A. No, sir.

XQ.90. Has it ever done anything in connection with rates or rate making or raising rates or lowering

rates or looking after lawsuits for any companies? A. No, sir. Our activities do not embrace those things.

XQ.91. Tell me, does the Insurance Executives' Association use the long distance telephone much or little in the communication with the various fire insurance companies of the country with whom it does have any sort of business? A. I should say that we use it extensively.

XQ.92. Doesn't the long distance telephone bill of this association amount every month on the average to a good many hundreds of dollars, or does it? A. No, hardly that.

Mr. Bullitt: That is all I want to ask him.

Re-Direct Examination by Judge Henson.

RDQ.93. Did you follow up, with the persons or companies interviewed, did you follow up with a letter of confirmation of any kind? A. I haven't any recollection of that, sir.

RDQ.94. Your entire contact ended with the telephone conversations or with the personal interviews which you have described? A. Yes, sir.

Judge Henson: That is all.

The Special Master: Let me ask you, Mr. Erskine, we would like to know something about what the Executives' Association is. Who is eligible to membership?

A. The membership in the Insurance Executives' Association is a permanent membership?

The Special Master: Yes, I know. A man belongs, but what does he have to be in order to be a member?

A. He has to be a chief executive with a rank either of president or vice-president in the event of an American company, or with the title of manager or assistant manager of a foreign company.

The Special Master: That is United States Manager or United States Assistant Manager of a foreign company?

A. That is correct.

The Special Master: That is due to the fact that so far as the foreign company is concerned, the United States Manager in America is the chief officer?

A. Yes, sir.

The Special Master: What is the object of the association?

A. May I continue just a moment?

The Special Master: Certainly.

A. I didn't quite finish. Then there are certain qualifications, such as the companies that these men are connected with must be affiliated with what we call the major regional organizations of the country, namely, the Western Underwriters' Association, the Eastern Underwriters' Association, the Southeastern Underwriters' Association and the Board of Fire Underwriters of the Pacific and the National Automobile Underwriters' Association.

The Special Master: In other words, they have to belong to the regulars, as you understand it?

A. Organization companies, as we term them.

The Special Master: What are the functions of the association? What does it exist for? What is its purpose?

A. Why, the purpose of the association is specifically set forth in some articles of the association with which I could supply you. I would rather let them speak for themselves.

The Special Master: You have it right here, don't you?

A. Yes, sir.

The Special Master: Would you mind letting me look at it?

A. No, sir. Do you want to? Shall I get it?

The Special Master: Yes.

Judge Henson: Shall we indulge him the time?

The Special Master: Yes. This is a good time to do it and I want to know.

(Whereupon, a short recess was taken, after which the following proceedings were had and entered of record:)

The Special Master: Do you have a statement of the purpose of the association?

A. I will give you that, sir.

The Special Master: This was taken from the articles of association?

A. This was taken from the articles.

The Special Master: I see among other purposes that the association is formed "to bring about improvements, reforms, and economies in the methods and practice of conducting the business of fire insurance and its allied lines so that the methods for making rates may be simpler and more economical; that rates may be better adapted to the needs of various localities, classes of business and individual owners; that forms of coverage bet-

ter suited to the changing conditions of business and manufacture may be devised; and in general"—I am not reading the whole thing—"and in general that the operations of companies may be more efficiently conducted and better service rendered to the insuring public, and to promote the interests of stock insurance companies."

Those are, among others, the purposes of the association; those that I have just read?

A. Yes, sir.

The Special Master: Now, in the insurance business is it true that it is impossible for stock fire insurance companies to entirely operate independently of each other?

A. Oh, I think that is generally conceded.

The Special Master: They can compete for the business but even though they do so, they have a common interest in rates?

A. Yes, sir.

The Special Master: They have a common interest in regulations of various incidents?

A. Yes, sir.

The Special Master: They have a common interest in the adjustment of losses on account of the fact that large risks usually are covered by a number of different companies? It is either placed with a number of different companies to begin with or if the whole risk is placed with one company it is likely to be reinsured to keep the risk spread?

A. That is right.

The Special Master: Regardless of the fact it is competitive, they have many things in common?

A. That is right.

The Special Master: It is the duty of the executive to direct those activities?

A. That is right.

The Special Master: And since they do work in common, this association is a convenient vehicle to aid in looking after those things where they have a common interest, is that right?

A. I think that is a very fair statement. I would like to supplement it by saying that a good many of the activities of this association are carried out and have been carried out through the organizations which are set up especially for some particular jurisdiction.

The Special Master: Yes, I understand that, but these variations are sometimes confined to a particular

territory and sometimes they are confined to a particular branch of activity, whereas, the executives—

A. (Interrupting) That is true.

The Special Master (Continuing): Have to be interested in all of the activities in all of the territory?

A. That is true.

The Special Master: And that resulted in the formation of this association; at least, it had something to do with the formation?

A. Yes, sir.

The Special Master: Now, the evidence so far in this case is that the Missouri rate litigation was really delegated to a committee out at Chicago, a committee of five?

A. That is my understanding.

The Special Master: But the fact remains that the plaintiffs in all of those cases were the fire insurance companies themselves, so that the chief officers of those corporations, if they desired, could withdraw that control from that committee if they desired to do so?

A. I presume so.

The Special Master: And this association and its paid officers represented those executives who could have taken charge of the litigation if they had desired to do so or had thought there was any reason to do so? Your paid officers, employees of this association, serve those executives?

A. Oh, yes, that is true.

The Special Master: Now, in view of that fact, did the officers of the employees of this association attempt to keep track of what was going on in Missouri with the rate litigation or did they not?

A. I should say not. I don't think that any particular consideration was given to the Missouri situation.

The Special Master: It did not receive reports from time to time as to what was going on?

A. Not direct reports. If any reports came, it was the same kind of a report that might have been sent or submitted to each of the companies.

The Special Master: You did not request any such report?

A. No, sir.

The Special Master: Paid no attention to it?

A. I didn't. I don't believe Mr. Haid did.

Mr. Berger: When did this association start?

A. In 1932.

The Special Master: All right, I just wanted to see what the relation of this association was to the Missouri rate litigation. That is all I want to ask.

RDQ.95. (By Judge Henson) Organized in 1932, it still continues? A. Yes, sir.

RDQ.96. Its offices are these offices here, using here on this floor and these adjacent offices, I suppose, of the Insurance Executives' Association, don't they occupy this entire 35th floor of this building? A. Yes, sir.

RDQ.97. Including the room here where we are having these hearings? A. Yes, sir.

RDQ.98. Now, Mr. Haid's office is on this floor in one of these rooms, this corner room out here? A. Yes, sir, directly opposite.

RDQ.99. Where is yours from that? A. It is the office near the door, the entrance.

RDQ.100. Are there any other executives here besides the two of you, I mean officers of the company? A. No, sir.

The Special Master: Of the association?

Judge Henson: Of the association, pardon me?

A. No.

RDQ.101. (By Judge Henson) That was the situation in 1935? A. Yes, sir.

RDQ.102. The other employees, I suppose, are secretarial and stenographic, and that was the situation in 1935? A. Yes, sir.

Judge Henson: That is all. I believe, your Honor, I will have this marked.

The Special Master: You are offering in evidence now the exhibit that he furnished me?

Judge Henson: Yes, sir.

(Said Articles of Association, handed to the reporter, were marked for identification as "Defendants' Exhibit 204, EFM.")

Judge Henson: Gentlemen, would you prefer to have the articles themselves rather than an excerpt from them?

The Special Master: I think not. I think it is better the other way around. You just make a great big record for nothing.

Judge Henson: Now, I offer in evidence Defendants' Exhibit 204.

(Which said Defendants' Exhibit 204, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 204.

This organization shall be known as the Insurance Executives Association. Its principal objects shall be in every lawful way (a) to maintain among its members a spirit of loyalty to obligation, to establish the practice of fair dealing and the observance of ethical principles in competition with one another, and to support all territorial and special organizations which shall be listed by the board of trustees and of which companies represented in the organizations are or shall become members, (b) to bring about improvements, reforms, and economies in the methods and practice of conducting the business of fire insurance and its allied lines so that the methods for making rates may be simpler and more economical; that rates may be better adapted to the needs of various localities, classes of business and individual owners; that forms of coverage better suited to the changing conditions of business and manufacture may be devised; and in general that the operations of companies may be more efficiently conducted and better service rendered to the insuring public, and (c) to promote the interests of stock insurance companies."

Mr. Berger: I think it ought to be stated just what it is.

The Special Master: I will ask the witness. The exhibit that Judge Henson has just offered in evidence is an excerpt from the articles of association of the Insurance Executives' Association, is it?

A. Being the first paragraph thereof.

The Special Master: And being that part of the articles which states the purpose of the association?

A. Correct.

(List of companies, handed to the reporter, were marked for identification as "Defendants' Exhibit 205, EFM.")

RDQ.103. (By Judge Henson) This is Defendants' Exhibit 205, which you have just now produced. In a general way just state what it is. A. That was a list that was—

RDQ.104. (Interrupting) Of the companies of the impoundments? A. A list of the companies interested in the federal cases showing their impounded premiums.

RDQ.105. By the federal cases, you mean the Missouri cases? A. Yes, sir.

Mr. Murphy: Missouri cases in the federal court.

A. Missouri cases in the federal court.

The Special Master: Who prepared it and when?

A. This came to Mr. Haid from Mr. Street.

The Special Master: In connection with the request for the 5 per cent contribution or approximately at that time?

A. So far as I know, with the checks that Mr. Street sent to Mr. Haid.

The Special Master: All right.

RDQ.106. (By Judge Henson) I would like this explanation: The first column of figures here, the word "Amount" above it, is that the total impounded premiums or the 11 percent? A. No, those are the total impounded premiums.

Mr. Murphy: Up to a certain date.

A. Up to May 1st.

RDQ.107. (By Judge Henson) In the Missouri rate litigation? A. Yes, sir.

Judge Henson: Now, I offer in evidence Exhibit 205.

(Which said Defendants' Exhibit 205, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

D 205

6 Compounded 2nd Tuesday in May

MISSOURI DEPOSITED PREMIUMS

OCTOBER 31,1935.

SUIT NUMBER	COMPANY	AMOUNT	6%
270	American Insurance Co.	$177,898.21	10,673.89
271	Agricultural Ins.Co.	40,817.91	2,449.07
273	Aetna Insurance Co.	216,548.93	12,992.94
274	Alliance Insurance Co.	21,548.61	1,292.92
275	American Alliance Ins.Co.	79,853.29	4,792.88
276	American Central Ins.Co.	151,771.51	9,106.29
277	American Eagle Fire	47,205.52	2,832.33
279	American Union	25,148.39	1,508.84
280	Atlas Assurance Co.	43,183.47	2,591.01
281	Automobile Ins.Co.	100,758.42	6,381.51
282	Bankers & Shippers	41,219.47	2,473.17
283	Boston Insurance Co.	105,011.03	6,300.66
284	British American Assur.Co.	10,843.79	650.63
286	Caledonian Ins.Co.	9,910.15	594.61
288	California Ins.Co.	19,563.29	1,173.80
289	Camden Fire Ins.Co.	46,011.80	2,761.91
292	Chicago Fire & Marine	10,343.90	620.63
293	Citizens Insurance Co.	55,243.91	3,314.63
294	City of New York Ins.Co.	53,426.03	3,205.44
295	Columbia Insurance Co.	3,801.89	228.11
296	Columbia Fire Ins.Co.	16,482.40	988.94
297	Commerce Ins.Co.	7,730.55	463.83
298	Commercial Union Assur.Co.	67,884.87	4,071.89
299	Commercial Union Fire	27,693.88	1,661.63
301	Concordia Fire	57,184.80	3,429.89
302	Connecticut Fire	100,277.62	6,016.14
303	Continental Ins.Co.	286,528.44	17,191.71
304	County Fire Ins.Co.	5,190.77	311.45
305	Detroit Fire & Marine	17,946.57	1,076.91
306	Dubuque Fire & Marine	58,190.05	3,491.40
307	Eagle Fire Ins.Co.of N.Y.	17,931.97	1,075.92
308	Eagle Star & Brit.Dom.	20,571.54	1,234.29
309	East & West Ins.Co.	26,052.21	1,563.07
310	Equitable Fire & Marine	37,742.19	2,145.27
312	Federal Union Ins.Co.	13,876.89	772.58
313	Fidelity-Phenix Fire	336,691.80	20,201.51
314	Fire Ass'n.of Phila.	77,097.25	4,625.84
315	Fireman's Fund Ins.Co.	114,784.23	6,887.05
316	Firemen's Ins.Co.	120,867.98	7,214.88
317	First American Fire	26,070.88	1,564.25
318	Franklin Fire Ins.Co.	161,292.23	9,677.53
319	Franklin National	18,967.58	1,138.05
320	Girard Fire & Marine	36,404.96	2,184.30
321	Glen Falls Ins.Co.	49,817.05	2,989.02
322	Globe & Rutgers Fire	57,056.22	3,423.37
323	Granite State Fire	16,722.70	981.36
324	Great American Ins.Co.	219,212.70	13,153.96
325	Guaranty Fire Ins.Co.	5,806.88	348.41
326	Hanover Fire Ins.Co.	72,329.66	4,339.78
327	Hartford Fire Ins.Co.	476,585.67	28,595.71
328	Home Insurance Co.	628,962.72	37,737.81
329	Home Fire & Marine	29,186.57	1,811.97
330	Hudson Insurance Co.	12,313.37	738.80
331	Imperial Assurance Co.	21,270.09	1,276.21
332	Importers & Exporters	49,644.05	2,978.78
334	Ins.Co.of North America	178,067.72	10,684.06
335	Ins.Co.of State of Pa.	37,533.78	2,252.02
336	Law,Union & Rock Ins.Co.	26,158.84	1,569.46
338	Liverpool,London & Globe	178,944.26	10,736.66
339	London Assurance Corp.	32,893.46	1,973.72
340	London & Lancashire	7,651.09	459.07
341	London & Provincial Marine & General Ins.Co.	4,653.79	279.23
342	London & Scottish Assur.Corp.	13,466.99	807.99

ENT. NUMBER	COMPANY	AMOUNT	64
	Lumbermen's Ins.Co.	$ 135.01	$ 1,928.10
	Manhattan Fire & Marine	2,922.90	596.03
	Massachusetts Fire & Marine	6,532.32	428.12
	Mechanics Insurance Co.	1,743.84	464.29
	Merchants Ins.Co.	2,218.04	1,213.68
	Merchants Fire Assur.Corp.	60,279.86	3,615.59
	Merchants Fire Ins.Co.	12,138.27	728.30
	Mercury Insurance Co.	26,607.44	1,596.45
	Michigan Fire & Marine	15,834.79	950.09
	Milwaukee Mechanics	67,174.90	4,665.27
	Nat'l.Ben Franklin Fire	27,168.28	1,631.42
	National Fire Ins.Co.	312.45	18,474.17
	National Liberty Ins.Co.	207.70	5,112.46
	National Reserve Ins.Co.	821.89	811.28
	National Security Fire	043.86	662.63
	National Union Fire	279.93	4,822.80
	Newark Fire Ins.Co.	521.63	1,711.30
	New England Fire Ins.Co.	469.12	456.95
	New Hampshire Fire	698.24	4,601.06
	New Jersey Ins.Co.	045.44	1,682.73
	N.Y.Underwriters Ins.Co.	930.36	9,055.48
	Niagara Fire Ins.Co.	965.72	2,927.95
	Northern Assurance Co.	743.20	5,084.59
	Northern Insurance Co.	784.14	2,367.05
	North River Ins.Co.	320.42	4,072.22
	Northwestern Fire & Marine	107.78	786.47
	Norwich Union Fire	027.49	2,641.66
	Old Colony Ins.Co.	932.00	1,015.92
	Orient Insurance Co.	70,124.78	4,207.49
	Pacific Fire Ins.Co.	32,043.43	1,922.61
	Palatine Insurance Co.	33,385.92	2,003.04
	Patriotic Insurance Co.	4,844.17	290.17
	Philadelphia Fire & Marine	51,064.11	3,063.85
	Phoenix Assurance Co.	77,303.92	4,638.24
	Phoenix Insurance Co.	120,522.85	7,231.37
	Central States Fire	33,997.98	2,015.63
	Minneapolis Fire & Marine	22,471.18	1,324.27
	Presidential Fire & Marine	3,946.55	212.79
	Providence Washington	42,714.55	2,624.07
	Provident Fire Ins.Co.	7,763.22	462.22
	Queen Insurance Co.	102,977.62	6,176.26
	Reliance Ins.Co.	20,913.07	1,254.82
	Rhode Island Ins.Co.	52,961.55	3,177.69
	Royal Exchange Assurance	169,699.40	6,581.96
	Royal Insurance Co.	97,997.48	5,872.85
	Safeguard Insurance Co.	3,907.80	232.47
	St.Paul Fire & Marine	82,472.94	4,946.14
	Scottish Union & National	86,896.17	5,297.41
	Security Insurance Co.	3,215.81	192.98
	Sentinel Fire Ins.Co.	6,804.42	1,722.22
	Springfield Fire & Marine	262,002.83	15,840.14
	Standard Fire Ins.Co.	26,811.21	1,608.67
	Stuyvesant Fire Ins.Co.	57,820.53	3,469.23
	Star Insurance Co.	27,190.36	1,727.88
	State Assurance Co.	10,303.13	618.20
	Stuyvesant Ins.Co.	27,428.62	1,645.70
	Sun Insurance Office	74,837.20	4,709.27
	Superior Fire Ins.Co.	19,904.71	1,218.26
	Union Fire & Life Ins.Co.	12,844.82	777.78
	Yorkie Marine & Fire	38,957.72	2,157.54
	Transcontinental Ins.Co.	13,784.72	799.68
	Travelers Fire Ins.Co.	174,761.18	10,485.67
	Twin City Fire Ins.Co.	2,872.68	221.00
	Union Assurance Society	18,348.68	911.00
	Union Fire Ins.Co.	12,872.78	902.00
	United Firemen's Ins.Co.	2,147.70	132.80
	United States Fire Ins.Co.	$18,989.68	9,119.06

L'dm

-3-

UNIT NUMBER	COMPANY	AMOUNT	6%
416	U.S.Merchants & Shippers	$ 6,379.96	$ 502.80
418	Victory Insurance Co.	12,628.45	127.32
419	Westchester Fire Ins.Co.	71,348.10	4,280.89
420	Western Assurance Co.	18,511.32	1,110.68
421	Western Fire Ins.Co.	33,932.74	2,035.96
422	World Fire and Marine	23,290.23	1,397.41
423	Yorkshire Insurance Co.	39,458.64	2,367.52
425	Mechanics & Traders	22,897.21	1,373.83
426	Potomac Insurance Co.	39,014.84	2,340.89
501	Underwriters Grain Ass'n.	41,419.67	2,485.18
502	Pittsburgh Underwriters	2,998.69	179.92
		$9,020,279.01	$541,216.67

4510 3.45

(List of companies, handed to the reporter, was marked for identification as "Defendants' Exhibit 206, EFM.")

RDQ.108. Now, I show you what the reporter has marked "Defendants' Exhibit 206," and will get you to state who prepared this document? A. This, sir, was a document that I prepared, based upon the list that has been previously exhibited.

RDQ.109. State whether or not that is a document you mentioned back in your testimony a while ago and which I asked if you had it left in your files and would produce it? A. This is it.

RDQ.110. That is the same document? A. Yes, sir.

RDQ.111. If I understand you, you prepared that yourself? A. Yes, sir.

RDQ.112. Who gave you the information upon which to prepare it, Mr. Haid or did you get it from that list? A. It was based on that list and Mr. Haid gave me the information that was necessary to make it out in this fashion.

RDQ.113. Well, then you undertook to set out from Exhibit 205, in making 206 you undertook to set out the 11 per cent premiums, the total impounded premiums and the 5 per cent asked of the companies? A. That is right.

RDQ.114. All that information is on this exhibit? A. Yes.

Judge Henson: I now introduce Exhibit 206 in evidence.

(Which said Defendants' Exhibit 206, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

COMPANIES	11% PAYMENT	TOTAL PAYMENT	IMPOUNDED PREMIUMS	TOTAL IMPOUNDED PREMIUMS	5% OF IMPOUNDED PREMIUMS	
American Insurance Co.	$ 19,568.80		$ 177,898.21			
Columbia Fire Ins. Co.	1,813.06	$ 21,381.86	16,482.40	$194,380.61	$ 9,719.03	
Aetna Insurance Co.	23,820.36		216,548.93			
World Fire & Marine	2,561.95	26,382.31	23,290.23	239,839.16	11,991.95	
Agricultural Ins. Co.	4,489.97	4,489.97	40,817.91	40,817.91	2,040.89	direct —
Atlas Assurance Co., Ltd.	4,750.18	4,750.18	43,183.47	43,183.47	2,159.17	
Automobile Insurance Co.	11,699.43		106,358.42			
Standard Fire Ins. Co.	2,949.23	14,648.66	26,811.21	133,169.63	6,658.48	
Bankers & Shippers Ins.Co.	4,534.14		41,219.47			
New Jersey Ins. Co.	3,085.00		28,045.44			
Pacific Fire Ins. Co.	3,524.78	11,143.92	32,043.43	101,308.34	5,065.41	
Boston Insurance Co.	11,551.21		105,011.03			
Old Colony Ins. Co.	1,862.52	13,413.73	16,932.00	121,943.03	6,097.15	
Crum & Forster Group:						
British American Assur.	1,192.82		10,843.79			
North River	7,405.25		67,320.42			
United States	16,718.31		151,984.68			
Westchester	7,848.29		71,348.10			
Western Assurance	2,036.24		18,511.32			
U. S. Merchs. & Shippers	921.80	36,122.71	8,379.96	328,388.27	11,419.41	
Caledonian Ins. Co.	1,090.12	1,090.12	9,910.15	9,910.15	495.50	direct
Camden Fire Ins. Co.	5,063.50	5,063.50	46,031.80	46,031.80	2,301.59	
~~Chicago Fire & Marine~~						
Commercial Union Group:						
American Central	16,694.87		151,771.51			
California	2,151.96		19,563.29			
Commercial Union Fire	3,046.53		27,695.88			
Commercial Union Assur.	7,465.14		67,864.87			
Palatine Ins. Co. Ltd.	1,275.23	31,719.70	11,592.08	326,488.63	16,324.43	

COMPANIES	11% PAYMENT	TOTAL PAYMENT	IMPOUNDED PREMIUMS	TOTAL IMPOUNDED PREMIUMS	5% OF IMPOUNDED PREMIUMS
Continental Ins. Co.	$ 31,518.13		$ 286,528.44		
American Eagle	5,192.61		47,205.52		
Fidelity Phoenix	37,036.10		336,691.80		
First American	2,867.80		26,070.88		
Niagara Fire	5,496.24	$ 82,110.86	49,965.79	$ 746,462.43	$ 37,323.12
Eagle Star & Brit. Doms.	2,262.87	2,262.87	20,571.54	20,571.54	1,028.57
~~Fire Assn. of Phila.~~					
Glens Falls Insurance Co.	5,479.68		49,817.05		
Commerce Ins. Co.	850.36	6,330.24	7,730.55	57,547.60	2,877.38
Globe & Rutgers Ins. Co.	6,276.18	6,276.18	57,056.22	57,056.22	2,852.81
~~Guaranty-Fire~~	~~660.76~~	~~660.76~~	~~6,006.88~~	~~6,006.88~~	~~300.34~~
Hanover Fire Ins. Co.	9,056.26	9,056.26	82,329.66	82,329.66	4,116.48
Hartford Fire Ins. Co.	52,424.01		476,581.87		
Citizens Ins. Co.	6,076.83		55,243.91		
N. Y. Underwriters	16,602.45		150,931.36		
Northwestern F. & M.	1,441.86		13,107.78		
Twin City Ins. Co.	1,084.05	77,629.20	9,855.00	705,719.92	35,285.99
Home Insurance Co.	72,481.94		658,926.75		
City of N. Y.	5,876.64		53,424.03		
Franklin Fire	17,742.14		161,292.23		
National Liberty	9,372.85	105,473.57	85,207.70	958,850.71	47,942.53
Importers & Exporters	5,460.96	5,460.96	49,645.05	49,645.05	2,482.25
Insurance Co. of N. Amer.	19,587.45		178,067.72		
Alliance Ins. Co.	2,370.35		21,548.61		
National Security	1,214.82		11,043.86		
Phila. F. & M.	5,617.05	28,789.67	51,064.11	261,724.30	13,086.21
Ins. Co. State of Penna.	4,128.71	4,128.71	37,533.74	37,533.74	1,876.68

COMPANIES	11% PAYMENT	TOTAL PAYMENT	IMPOUNDED PREMIUMS	TOTAL IMPOUNDED PREMIUMS	5% OF IMPOUNDED PREMIUMS
London Assurance Corp.	$ 6,594.00		$ 59,945.48		
Manhattan F. & M.	1,092.73	$ 7,686.73	9,933.90	$ 69,879.38	$3,493.96
Merchants Fire Assur.	6,628.58	6,628.58	60,259.86	60,259.86	3,012.99
National Fire Ins. Co.	33,870.37		307,912.43		
Franklin National	2,086.43		18,967.58		
Mechanics & Traders	3,618.73		32,897.51		
Transcontinental	1,465.72	41,041.25	13,324.72	373,102.24	18,655.11
New Hampshire Fire	8,435.27		76,684.24		
Granite State Ins. Co.	1,799.52	10,234.79	16,359.30	93,043.54	4,652.18
Northern Assurance Co.	9,321.75		84,743.20		
London & Scottish	1,481.32	10,803.07	13,466.59	98,209.79	4,910.48
Northern Insurance Co.	8,006.26	8,006.26	72,784.14	72,784.14	3,639.20
Norwich Union Fire Ins.Soc.	4,843.02		44,027.49		
Eagle Fire Ins. Co.	1,972.52	6,815.54	17,931.97	61,959.46	3,097.97
Phoenix Assur. Co. Ltd.	8,503.43		77,303.92		
Columbia Ins. Co.	418.21		3,801.89		
Imperial Assur.	2,339.71		21,270.09		
United Firemen's	236.25	11,497.60	2,147.70	104,523.60	5,226.18
Phoenix Ins. Co.	13,258.61		120,532.85		
Connecticut Fire	11,025.92		100,235.62		
Equitable F. & M.	3,929.33		35,721.19		
Minneapolis F. & M.	2,482.83		22,571.18		
Central States Fire	3,695.33	34,392.02	33,893.90	312,854.74	15,632.73
Potomac Insurance Co.	5,391.63	5,391.63	49,014.84	49,014.84	2,450.74
Providence Washington Ins.	4,810.80	4,810.80	43,734.55	43,734.55	2,186.72
Rhode Is. Ins. Co.	8,885.77		82,961.55		
Guaranty Fire Ins. Co.	520.76	9,406.53	5,806.08	88,767.63	4,438.42

368

also Union

direct -

Rhode Is. Ins. Co. · 5,625.77
Guaranty Fire Ins. Co. · 250.76 5,464.65 52,981.52 5,000.00 50,722.45 5,232.42

IV

COMPANIES	11% PAYMENT	TOTAL PAYMENT	IMPOUNDED PREMIUMS	TOTAL IMPOUNDED PREMIUMS	5% OF IMPOUNDED PREMIUMS
Royal Exchange Assurance	$ 12,066.93		$ 109,699.40		
Provident Fire ·	847.40		7,703.65		
State Assurance Co. ·	1,133.37	$ 14,047.70	10,303.33	$ 127,706.38	$ 6,385.31
Royal Ins. Co., Ltd. ·	10,779.72		97,997.48		
Federal Union ·	1,416.39		12,876.29		
L. & L. & G. ·	19,023.87		172,944.26		
Newark Fire ·	3,137.38		28,521.63		
Queen ·	11,323.14		102,957.62		
Star ·	3,160.40	48,840.90	28,730.90	444,008.18	22,200.40
Scottish Union & National	9,711.92		88,290.17		
American Union Ins. Co.	2,766.32	12,478.24	25,148.39	113,438.56	5,671.92
Springfield Fire & Marine	29,040.25		264,002.28		
Michigan Fire & Marine ·	1,741.83		15,834.79		
New England ·	1,754.40		15,949.12		
Sentinel Fire ·	2,270.88	34,807.36	20,644.32	316,430.51	15,821.52
Standard Fire of N. J.	6,360.26	6,360.26	57,820.53	57,820.53	2,891.02
Stuyvesant Ins. Co. ·	2,577.12	2,577.12	23,428.35	23,428.35	1,171.41
Sun Insurance Office	7,900.33		71,821.20		
Patriotic ·	548.49	8,448.82	4,986.23	76,807.43	3,840.37
Travelers Fire Ins. Co.	19,224.06	19,224.06	174,764.18	174,764.18	8,738.21
Tokio Marine & Fire ·	3,955.30	3,955.30	35,957.32	35,957.32	1,797.86
Yorkshire Ins. Co. ·	4,340.45		39,458.64		
London & Provincial	1,061.92	5,402.37	9,653.79	49,112.43	2,455.62

	11% PAYMENT	TOTAL PAYMENT	IMPOUNDED PREMIUMS AS OF MAY 1, 1935	TOTAL IMPOUNDED PREMIUMS	5% OF IMPOUNDED PREMIUMS
Svea .	$ 1,425.41		$ 12,958.26		
Hudson .	1,354.47	$2,779.88	12,313.37	$25,271.63	$ 1,263.58

647.91
615.66

RDQ.115. State whether or not you had the 11 per cent checks in your possession which are listed here for the various companies. You had the 11 per cent checks? A. Yes, sir.

Judge Henson: That is all.

Re-Cross Examination by Mr. Bullitt.

RXQ.116. Mr. Erskine, I call your attention to this clause in your articles that you have produced: "This organization shall not assume or exercise jurisdiction relating to the making or maintenance of rates of insurance, or over the control or commissions paid or allowable to agents, or the manner of transacting business in any state wherein the exercise of such jurisdiction or control is or may hereafter be unlawful." Has the association lived up to and conducted its business in accordance with that?

Judge Henson: I object to that. I don't see any purpose in that.

The Special Master: I think that is a conclusion.

Mr. Bullitt: Wait a minute; it is easy enough to get around that objection.

RXQ.117. Has the association ever done anything that was contrary or in opposition to those limitations upon its power? A. I believe not.

The Special Master: Let him say that is his belief. Why shouldn't he say so.

RXQ.118. (By Mr. Bullitt) How many different fire insurance companies are represented in this Insurance Executives' Association? I will put it that way. How many executives of different companies compose this association? A. The membership, I think, is 38 at the present time.

RXQ.119. That is 38 different companies? A. No, sir, 38 executives.

Mr. Bullitt: Read the question. (Question read.)

The Special Master: Thirty-eight members.

Mr. Bullitt: Now, I say again, read the question. (Question read.)

RXQ.120. Companies. A. Well, I ought to know, but I don't. I should judge around 125. It would be a very simple matter to find that out.

RXQ.121. In other words, 38 executives represent 125 companies, is that correct? A. If the number of companies is correct, that is the situation.

RXQ.122. And are they the same companies that constitute the 137 companies that were involved in this Missouri rate litigation or not? A. Well, there are other companies in addition to that that were in the Missouri litigation.

RXQ.123. Do you know, and if you don't, look it up and give the answer, how many of the 137 companies that were involved in this federal court litigation were represented by executives, or their executives in this association?

The Special Master: A great majority were?

A. A great majority were. I can't answer that specifically and correctly.

The Special Master: There is already some evidence that they called on one man to represent a group of companies who didn't belong to the association. The great majority of them do, but not all of them.

Mr. Bullitt: I misunderstood your question. Mr. Berger was saying this is an association of executives but not an association of companies, but I say that is just quibbling.

The Special Master: Well, that is strictly true.

Mr. Bullitt: I don't pay any attention to that at all.

The Special Master: But the reason they belong is because they want to serve their companies..

Mr. Bullitt: I understand. That is all.

Re-Direct Examination by Judge Henson.

RDQ.124. Now, Mr. Erskine, I show you this Exhibit 206 which you prepared and the outer right-hand column, I believe, is the 5 per cent which was undertaken to be collected? A. That is right.

RDQ.125. Showing the 5 per cent in each company? A. Yes, sir.

RDQ.126. Now, I don't see on here any credits for advances, if any, such companies may have made a year previously? A. No, sir, that would not appear there.

RDQ.127. Why wouldn't it? A. This list was—I believe was made out in triplicate. I believe that a copy of it was sent to Mr. Street, another copy Mr. Haid used, and when, for instance, an involved company had made a payment, Mr. Haid tore off that section pertaining to that particular company and attached to that a memorandum indicating the advance payments that had been made.

The Special Master: This was made first, and then the question of credits was worked out afterwards, after this was made.

A. That was right.

RDQ.128. (By Judge Henson) Did you make a new chart then after the matter of credit was allowed? A. I did not sir, no, sir.

RDQ.129. You haven't in your files then a memorandum showing where these credits were given in these companies where the advances were made? A. I haven't sir.

Re-Cross Examination by Mr. Bullitt.

RXQ.130. Mr. Erskine, will you furnish us a list of those companies in the 137 federal courts suits who are not represented by their executives in this Insurance Executives' Association?

Mr. Berger: That is in 1935 and 1936.

RXQ.131. (By Mr. Bullitt) In 1935 and 1936. A. I could prepare that very easily.

RXQ.132. Bring it in and attach it to your answer.

(Witness excused.)

PAUL L. HAID, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Paul L. Haid.

Q.2. Mr. Haid, you live here in New York? A. Yes, sir.

Q.3. You are president of the Insurance Executives' Association? A. Yes, sir.

Q.4. There is evidence that this association came into existence in 1932. A. May 1, 1932.

Q.5. Did you become president at that time? A. Yes, sir.

Q.6. And before that time what was your business? A. I was president of all of the companies in the America-Fire group.

The Special Master: The Continental—

A. (Interrupting) The Continental, Fidelity-Phenix, Niagara, American Eagle, First American and the Fidelity & Casualty Company.

Q.7. (By Senator Hollingsworth) Who is the president of that group now since you left? A. Mr. B. L. Culver succeeded me.

Q.8. Had there been any organization prior to that time that performed substantially these same functions? A. No, sir.

Q.9. Then after the association was formed, it opened up offices and started to function? A. These offices, yes, sir.

Q.10. You and Mr. Erskine are the salaried employees or executives of that association? A. Yes, sir.

Q.11. Now, as president of the association, what, in a general way, are your duties? A. Well, this association is used, if I may use the expression, as a sort of working forum in which matters of general interest to the stock fire insurance business may be considered by the members of this association.

Q.12. It is a sort of a clearing house of information in matters of that kind? A. And trouble.

The Special Master: Aids in developing policies on things that affect the various insurance companies in common, I suppose?

A. In common, yes.

Q.13. (By Senator Hollingsworth) Does it have an executive committee? A. Board of trustees.

Q.14. How many members constitute the board of trustees? A. Fifteen.

Q.15. You have a record of the persons who constituted the board of trustees in 1935 and 1936? A. I assume we have.

Q.16. Can you furnish that or can you call them off? A. No, I can't, as a matter of fact. Our trustees rotate and I can supply that information without any question.

Q.17. Do I understand there are some 38 active members of the association now? A. Yes.

Q.18. Who represent more than 100 companies? A. That is right.

Q.19. Was Mr. Charles R. Street a member of the association? A. He was not.

The Special Master: But the president of his companies was?

A. Oh, yes, Mr. Koop.

Q.20. (By Senator Hollingsworth) Mr. Koop was a member? A. Yes, sir, and a member of the trustees, I think, also.

Q.21. Now, is there any connection or functioning between the Subscribers' Actuarial Committee, which is an organization in the Western Department, as I understand? A. Yes.

Q.22. And this association? A. In a general way this association has contacts with all the various regional and rating organizations, and that includes, of course, the Western Actuarial Bureau.

Q.23. When the Subscribers' Actuarial Committee took over the direction of this litigation, the fire rate litigation in Missouri, did the association thereafter, the Executive Association, have anything to do with those instant cases until the compromise negotiations came before it in 1935?

Mr. Bullitt: Now, just a minute, Mr. Master, I object to that on two grounds: One, he assumes that there is such a thing as the Western Actuarial Bureau, as he called it, and I don't know whether he is talking about the Subscribers' Actuarial Bureau or the Missouri Inspection Bureau.

The Special Master: Yes, I don't know what that is.

Mr. Bullitt: And, second, he is now assuming, as a fact, that they took over the management of it and I don't think that is a fact. I object to that question because it contains an assumption of fact that he hasn't shown to exist.

The Special Master: I don't think there is any evidence to that effect. I don't remember it if there is. Perhaps you just used an expression that you didn't intend to use.

Senator Hollingsworth: I did, and I didn't state my question correctly. I will withdraw it.

Q.24. Who directed the Missouri litigation from the time of its inception, what organization or committee? A. Well, so far as I know, the Subscribers' Actuarial Committee.

Q.25. Did the Insurance Executives' Association have anything to do with the direction of that litigation down to the spring of 1935? A. They did not.

Q.26. Now, it appears that in May of 1935 a meeting was held in this office in connection with a proposed compromise of the litigation? A. That is correct.

Q.27. When did you first know that such a meeting was desired? A. As I recall it, the latter part of April I received a telegram from Mr. Street asking me to have

assembled in this office on a given date a named list of insurance executives.

Q.28. Do you have that telegram? A. No, sir.

Q.29. What did you do with it? A. I destroyed it immediately after the meeting. It had served its purpose.

Q.30. Well, don't you keep files? A. Yes, we keep files.

Q.31. Ordinarily when you receive a telegram in connection with a matter, don't you file the telegram? A. This was a matter entirely outside of this association. The association had nothing to do with the matter. If it had been an association matter, I may have kept the telegrams, but—

Q.32. (Interrupting) How do you know that you destroyed the telegram? A. Well, it isn't in the files.

Q.33. Well, generally when you receive a telegram in regard to a matter, and especially a matter that requires future action, don't you file that telegram away? A. Ordinarily when telegrams or letters or any other matter that is completely finished business, so to speak, we don't keep them.

Q.34. Do you have a distinct recollection of destroying this telegram? A. No, I do not.

Q.35. Have you looked in your files to see if you could find it? A. Yes, sir. I haven't looked; I have had the files examined.

Q.36. Do you have a file in connection with the Missouri rate litigation? A. Yes, sir.

Q.37. You looked in the file in the belief that the telegram would be there? A. I looked through the files to determine, back in March of this year, whether or not I had a list of the executives who were at this meeting. That was asked for and there was no such record.

Q.38. Well, did it come as a surprise to you when you didn't find this original telegram? A. No, sir.

Q.39. But you distinctly remember having received it? A. Oh, yes.

Q.40. What was the wording of the telegram as you recall? A. I can't tell you the wording. It was to this effect: Mr. Street wired me asking that I arrange a meeting with named individuals.

Q.41. Who were they? A. As I recall, Mr. Kurth, Mr. Sturm, Mr. Culver, Mr. Warner, Mr. Parsons, Mr. Koeckert.

Q.42. Anyone else? A. Not that I recall.

Q.43. You have attempted to refresh your recollection? A. I certainly have, sir.

Q.44. And you now believe that that was all of the men who were named in that telegram? A. Well, I have been told since that there were others present, but I have no recollection of their having been here.

Q.45. Who others do you understand were present that were not named in the telegram? A. Well, I don't say that. I don't say they were not named in the telegram.

Q.46. Who others were present than those whom you remember now and whose name you gave us? A. Mr. Cartlidge told me the other day that he was here. Mr. Barbour told me he was here. I don't have any recollection of either of them being here.

Q.47. Is it your judgment that they were not named in the telegram? A. I am not sure about Mr. Barbour. It would be a natural thing for Mr. Cartlidge to accompany Mr. Warner.

Q.48. Have you endeavored to obtain a copy of the telegram from Mr. Street's offices of the Actuarial Committee? A. No, sir.

Q.49. Have you made any inquiry concerning it? A. Concerning the telegram?

Q.50. Yes. A. No, sir.

Q.51. What was the remainder of the telegram; what did it say other than the names of the men? A. Stated the date.

Q.52. Did it state any purpose? A. Not that I recall.

Q.53. That was in April? A. I am assuming it was in April because I now know that the meeting was on May 2nd.

Q.54. And what is there that fixes in your mind it was on May 2nd? A. When I was requested to secure the original checks, I naturally saw that those checks were dated May 2nd, and some of those checks were delivered in this office the same day that the meeting was. I recall that very distinctly.

Q.55. Other than the dates of those checks you have no way of fixing the time of the meeting? A. That is correct.

Q.56. Did the telegram state that they were to consider the compromise of the litigation? A. As I recall, the telegram didn't state any purpose.

Q.57. And you, therefore, only advised the members that they were to meet with Mr. Street in these offices on May 2nd? A. That is correct.

Q.58. Did Mr. Street come here before the meeting? A. As I recall, the gentlemen who were present assembled all about the same time.

Q.59. Was Mr. Street in your offices prior to the meeting? A. Not that I recall.

Q.60. Did you have any communication with Mr. Street other than the telegram prior to the meeting? A. Not that I recall, sir.

Q.61. This meeting was in the daytime? A. As I recall, it was in the morning.

Q.62. Were you present throughout the meeting? A. As far as I remember, yes.

Q.63. Was there a secretary or stenographer present? A. No, sir.

Q.64. Any minutes or notes made of the meeting? A. Not to my knowledge.

Q.65. Any calculations? A. Except one thing, if I may say that.

The Special Master: Go ahead.

A. Following the meeting, Mr. Street handed me a small slip of paper on which were mentioned certain companies and amounts of advances that they were going to make at his request.

Q.66. (By Senator Hollingsworth) Where is that slip of paper? A. I haven't any idea.

Q.67. Did you destroy it immediately? A. I assume so.

Q.68. Why did he hand it to you, to be destroyed or to keep? A. No, he asked me if—he had stated at the meeting, as I recall, various gentlemen present volunteered to advance Mr. Street certain sums and this was a record of those companies and advances.

Q.69. Why did he hand it to you? A. And he asked me to have these checks, he had stated at the meeting, asked to have these checks sent to this office.

Q.70. Well, it was for your use in the assembling of the checks? A. Exactly right.

Q.71. And you did keep it for the time being? A. That is correct.

Q.72. But how long did you keep it after that? A. Well, I am assuming that immediately these checks came in, I believe there were five, and they were mailed to Mr. Street either that same day or the following day. The list had served its purpose.

Q.73. When Mr. Street called the meeting together, I presume he addressed the meeting? A. Correct, sir.

Q.74. I wish you would state as fully as you can the statement made by Mr. Street to the members of the meeting. A. As I recall Mr. Street's statement, he stated that he had been endeavoring for some little time to effect a settlement of the Missouri litigation and that he had been in communication with the officials from the State of Missouri and that he believed that a settlement could be effected. As I recall it, Mr. Street spoke of the insistence on the part of agents to a settlement, and as I recall it, he said he had had communications from the chambers of commerce of several cities, I believe St. Louis and Kansas City and St. Joe. Incidentally I had had one of those myself and he thought that the time had come when, if a satisfactory compromise could be made, it was a desirable thing to do, and he recommended to the executives present that they approve his going forward with the arriving at a settlement.

Q.75. What else? A. He later stated that he would need an advance in money for expenses, legal expenses, in connection with this settlement, and he had come East to ask the companies, several companies, a number of companies, to volunteer to make the necessary advance in the amount of $100,000.00, and it was his purpose to secure this advance from companies in New York and Hartford; that this was an advance; that he was unable to determine what the total amount of expense would be, but that subsequently these companies would be given credit for the advance that they presently made.

Q.76. What else did he say? A. Well, I don't recall much else that was said and there may have been an elaboration on some of the points that I have made.

Q.77. You have thought this over many times, haven't you? A. Oh, yes.

Q.78. And tried to refresh your recollection? A. Yes indeed.

Q.79. You have stated, as I understand you, all that you recall as to what happened at this meeting? A. With the exception of statements made on the part of executives, as I recall, Mr. Street made this further statement that one of those elaborations, he said that he was asking these companies to make this advance rather than get a prorata advance from all companies on account of the physical work involved obviously, and he asked for volunteer amounts, and as I recall it, certain companies, certain gentlemen present volunteered to advance specific sums.

Q.80. And how much money did they volunteer to advance, in round figures? A. Yes, I think this is correct on subsequent information, $62,500.00, as I recall it, was advanced by companies, different companies who were present, plus Mr. Street's own advance.

Q.81. What, if anything, did he say about getting the remainder of the $100,000.00 from any other source? A. Well, may I say that I am not specifically clear on that subject? I don't recall whether Mr. Street stated that he had been to Hartford the day before or whether he was going to Hartford the subsequent day, but he was going to collect the remainder of the $100,000.00 from Hartford companies.

Q.82. Whether he had been there before or was going, you don't recall? A. I am not certain about that.

Q.83. That is as far as you recall the entire happening at that meeting? A. That is correct.

Q.84. He opened the meeting by saying that he had been endeavoring to make a compromise of the rate litigation? A. Yes, sir.

Q.85. And that he had been in communication with the officers? A. I think he used the term "officials."

Q.86. Officials, and you understood by that that he meant the Missouri officials? A. Oh, yes.

Q.87. Well, did he tell you what conversations or communications he had had with any of the Missouri officials? A. I don't recall that he stated anything about his conversations.

Q.88. Did anyone ask him the name of the official that he had been in contact with? A. Not to my knowledge.

Q.89. Did he say that he had been in communication with any person other than the officials? A. He did not.

Q.90. Did he tell you in any general way anything about his endeavoring, that is, what the negotiations were? A. Yes.

Q.91. All right, what were they? A. He said that he was in hopes of effecting a settlement, as I recall his expression, on an 90-10 basis, but that in addition to that settlement—this is something I almost forgot—that in addition to that settlement there was to, and upon the insistence of agents, the State of Missouri was to be given the change in policy forms and contracts and various other broadening features which had for some

few years been in effect in adjoining states and which agents in Missouri were demanding, and that in addition to that he expected to arrange and endeavored to arrange a new rate filing which would be reductions in rates on some of the more desirable classes of properties in Missouri. I am quite sure that he went into some explanation of that situation.

Q.92. Well, did he tell you when or where he was going to contact these officials again? A. He did not.

Q.93. What did he say about requiring the money now? A. Well, as I recall, he said that he needed $100,000.00 for advance legal expenses.

Q.94. What did you understand him to mean by "legal expenses"? A. Why, expenses for attorneys.

Q.95. Was that the only explanation that he gave you as to the need of the $100,000.00? A. That is the only explanation he gave, sir.

Q.96. Were there any questions asked as to what the $100,000.00 was to be used for? A. Not that I recall. His explanation of legal expenses seemed—

The Special Master: Wait a minute he didn't—

A. (Interrupting) I say, his explanation of legal expenses seemed to be sufficient explanation; it was to me.

Q.97. (By Senator Hollingsworth) How soon did he tell you he thought he could effect the compromise?

Mr. Bullitt: Wait just a minute. Throughout Mr. Hollingsworth always indicates that he was talking to Mr. Haid, although he was here as an observer. He was talking to the other people.

The Special Master: Oh, well, I know.

A. I am assuming that.

Mr. Bullitt: There is a point. I don't want it to be afterwards brought out and insisted that Mr. Street was addressing this thing to Mr. Haid, as though you were the man that was running the thing. He had called the meeting and Mr. Haid was present.

The Special Master: What good would there be to make such a point?

Mr. Bullitt: I don't care what it makes, I don't want somebody in the future to read the printed record and say he was dealing with Mr. Haid.

Q.98. (By Senator Hollingsworth) You understood, when I am asking you about that, I mean that he was addressing the meeting.

The Special Master: Well, I understood Mr. Hollingsworth when he said, "What did he tell you," "you" being used in the plural or in the singular, and when he says "you," he means the members of that meeting. If he doesn't mean that, why, it doesn't connect up with any testimony that has been given in this case. Now, it is just as proper for him to say "you" and be referring to the members of the meeting as it is to refer to the individual witness. Is that the way you want it?

Senator Hollingsworth: That is exactly the way I meant it.

A. That is the way I understood it.

Mr. Bullitt: All right then, that understanding is all right.

Q.99. (By Senator Hollingsworth) How soon did he—

The Special Master: Of course, we don't take those chances of misunderstanding in Missouri. We always say, "You all."

(Whereupon, discussion was had off the record.)

Q.100. (By Senator Hollingsworth) How quickly did he tell you he expected to effect that compromise? A. I don't recall that he stated.

Q.101. Well, you knew, didn't you, from his conversation that it was imminent? A. Oh, yes, yes.

Q.102. As a matter of fact, it was, he desired to get this money quickly in order to clear the matter up quickly? That is right, isn't it? A. Well, he stated that he would like to have this money as soon as he could. He didn't state—

Q.103. You had a definite impression that there was an immediate need for the money in order to effect a compromise then? You understood it that way, didn't you? A. Well, I assume so, yes.

Q.104. He was asking these five executives for some sixty odd thousand dollars I believe. A. They volunteered that.

The Special Master: He asked more than that. He asked everybody that was there. Many were called and few were chosen.

Q.105. (By Senator Hollingsworth) Well, he understood at that time that he had to do some more choosing in Hartford, so he didn't expect to get the whole $100,000.00 here? A. That is right; he was apparently satisfied with the contributions from New York.

Q.106. Didn't any man ask why the legal expenses were necessary in order to negotiate a compromise? A. Not to my knowledge, sir.

Q.107. Can you conceive of any legal expenses that had to be arranged for a legitimate compromise of the case?

Mr. Bullitt: Let's see, I don't object to the witness answering, but it does seem to me that can he conceive—

The Special Master: Yes, I think that is a perfectly proper question.

Mr. Bullitt: He conceives?

The Special Master: Now, keep in mind what we are doing there. There is no doubt at all about the physical facts of who put up the money and what finally became of it. The only thing there is any question about is what these people had knowledge of, and that has to do with not merely what they saw and what was expressly said and what inferences they drew. I think it is perfectly proper for him to answer the question.

A. Might I have the question? (Question read.) Well, I would say that my own impression was that Mr. Street asking for this money, I never gave it a thought one way or the other.

Q.108. (By Senator Hollingsworth) Now, can you answer the question? Can you conceive of any legal expenses that would be necessary to effect a legitimate compromise?

Mr. Bullitt: Conceive now or conceive then?

Senator Hollingsworth: Now and then too. I will break it down.

Mr. Bullitt: There is a big difference. I just want to be sure. If he asked did he conceive then—

The Special Master: It is a perfectly plain question. He asks him, can he conceive.

Mr. Bullitt: All right, that is all I want, can he conceive now.

A. Well, my answer to that is "Yes."

Q.109. (By Senator Hollingsworth) What are they? A. Well, I will have to make an explanation.

Q.110. Go ahead, sir. A. That I would rather not make, if that is a proper statement to make.

Q.111. Well, I would like to have it.

The Special Master: Mr. Haid, you might rather not testify at all, but at the same time if you can answer the question I think you ought to do so.

A. Well, it is so intimate and personal that I hesitate to give the reason why I conceive of this, why I say "Yes" to your question.

Mr. Bullitt: Go ahead, I don't care how personal it is.

A. I was aware of the antipathy between Mr. Folonie and Mr. Street, and I can conceive that Mr. Street having ignored Mr. Folonie in a good many of the more recent situations that had taken place immediately previous, may have wanted to have secured himself other counsel in Missouri. Now, I don't like to make that statement.

Q.112. (By Senator Hollingsworth) Did Mr. Street say by any word that he wanted it for the purpose of employing other counsel? A. He did not.

Q.113. You had no information from Mr. Street about the employment of other counsel? A. I had not.

Q.114. And he gave none nor no inkling of any employment of other counsel? A. Not to my recollection, sir.

Q.115. Did any person at that meeting suggest the employment of other counsel? A. Not that I recall, sir, no, I can say positively I am certain of that, that they did not.

Q.116. It was not mentioned in any way? A. No, sir.

The Special Master: You were an executive of insurance companies before you were the head of this association now?

A. Yes, sir.

The Special Master: Were you connected with any company that was in the Kansas rate litigation?

A. Well, the answer to that is "Yes," if I may explain.

The Special Master: Well, were you conscious of the fact when that was settled that the companies paid the state's attorneys?

A. That was before I was—what year was that?

The Special Master: That was way back. Did you know about it?

A. I have known about it since; I believe Mr. Street was in Chicago with the Fidelity-Phenix at that time.

The Special Master: Were you connected with any company that was in the Kentucky rate litigation?

A. Yes, sir.

The Special Master: And the Arkansas rate litigation?

A. Yes, sir.

The Special Master: Do you know that when those cases were settled the companies always paid the attorneys for the state?

A. I don't remember.

The Special Master: That wasn't in your mind?

A. No, and in those years, as I recall, I was not in an official capacity that had anything to do with those.

The Special Master: But you misunderstood the purport of my question.

A. I am sorry.

The Special Master: Did you have knowledge that they had done that at the time Mr. Street was asking to raise extra money in 1935?

A. I don't recall.

The Special Master: So that didn't affect your judgment at all?

A. No, I don't think so.

The Special Master: But the strained relations between Mr. Folonie and Mr. Street you did know about?

A. Yes, I did know about them.

Q.117. (By Senator Hollingsworth) Now, at the time that Mr. Street told you that he needed the $100,000.00— A. Yes.

R.118. Had he told you that if he could raise that money he felt certain that the compromise could be effected? A. He didn't connect the two together, as I recall.

Q.119. He did not connect the two together? A. No, sir.

Q.120. Well, when these men volunteered to contribute, one, I believe $15,000.00, and others in various amounts, was there anything asked Mr. Street as to the certainty of effecting the compromise? A. Not that I recall. Mr. Street stated that he hoped to be able to effect a compromise and he was really asking for authority to proceed with his negotiations.

Q.121. Well, when he asked for authority to proceed with his negotiations, did he tell them the terms of the compromise? A. As I recall, he said that he hoped to effect a compromise on a 90-10 basis. I think that is the only expression he used except that these other collateral things that I have referred to previously.

Q.122. Did anyone ask him if the compromise didn't go through how they would be reimbursed for their advancements? A. Not to my recollection.

Q.123. So that so far as you know, it didn't occur to any man? A. That is correct.

Q.124. Well, I am not familiar with the transaction of business in the insurance world, but ordinarily when a man out in Missouri would give up $15,000.00 of his company's money for the purpose of negotiating a compromise, he would ask, "How am I going to get my money back if the compromise isn't effected?" Can you explain that? A. Why, yes, I can explain it.

Mr. Bullitt: Wait a minute, I object to his statement that "out in Missouri" they would think that.

The Special Master: Yes.

Mr. Bullitt: I object to it. He didn't even have a question.

The Special Master: Yes, that is right. That is argumentative.

Q.125. (By Senator Hollingsworth) Did that thought occur to you while you were in this meeting as to how these executives or these companies would be reimbursed for their contributions if the compromise didn't go through? A. Well, I can tell you how my mind worked on that proposition.

Q.126. All right.

The Special Master: That is really the subject of the inquiry, is how your mind worked on it.

A. My mind would naturally react to this: If the compromise wasn't made, the checks would be returned without any question whatsoever.

Q.127. (By Senator Hollingsworth) Well, you mean that the money would not be used if the compromise were not effected; that was the way your mind worked? A. Unless Mr. Street had expected to or had incurred, as he put it, legal expenses which would need to be—which the lawyers would have to be paid.

Q.128. But I understood you to say now that your mind carried this idea with is, that if the compromise were not effected, the $100,000.00 would be returned? A. Well, may I put it differently?

Q.129. Well, did you say that a moment ago?

The Special Master: Yes, but that isn't all he said.

Mr. Bullitt: He said except it might have to be paid to lawyers, one of whom might be somebody in place of Folonie.

The Special Master: Yes, go ahead and put it differently.

A. My reaction to the $100,000.00 was that Mr. Street didn't connect the $100,000.00 with the settlement. He was endeavoring to make a settlement and he stated that he needed $100,000.00 for legal expenses.

Q.130. (By Senator Hollingsworth) In connection with what? A. The Missouri litigation, not with the settlement, with the Missouri litigation.

Q.131. Oh. Then how did you get the idea that it would be returned if the settlement didn't go through? A. I got the idea that if Mr. Street was given money, in whatever amount, that he didn't use, it would be returned. No question about that in my mind.

Q.132. Then you did have an idea then that if the compromise were not made, the money would come back? A. No, I have the idea that if the money wasn't used by Mr. Street, then the money would be returned.

Q.133. Now, I have before me what purports to be a memorandum concerning a Hartford meeting of Saturday, May 4, 1935. I want to see if this might refresh your recollection as to what happened here?

Mr. Bullitt: What exhibit is that, Mr. Hollingsworth?

Mr. Berger: It hasn't been introduced.

Senator Hollingsworth: It hasn't been introduced.

Mr. Bullitt: Well, let's see, wait a minute.

Judge Henson: He asked one or two witnesses.

Mr. Bullitt: Let me see.

Senator Hollingsworth: It is one made by Mr. Stinson of May 4, 1935.

Mr. Bullitt: If you want to introduce it—

The Special Master: Mr. Hollingsworth, if there is anything in that memorandum that suggests to you a proper question to ask this witness, that is as good a source to get inspiration as any.

Mr. Bullitt: Oh, yes.

The Special Master: But to ask him about a memorandum made by another man about another meeting to refresh his memory as to what happened in this meeting would hardly be proper.

Q.134. (By Senator Hollingsworth) Well, I will ask you then if this occurred at the meeting, that you were asked to contribute as an advance for legal expenses, a sum of money, and I mean the meeting, and that Mr.

Street was to turn the money over to your attorneys, Hicks and Folonie, but it was not to be delivered until the settlement was effected? A. I recall no such statement.

Q.135. Was the firm of Hicks and Folonie mentioned? A. Yes, in this connection: I recall that Mr. Street made the statement to the meeting that these checks could be made payable either to C. R. Street or to Hicks and Folonie or to R. J. Folonie.

Q.136. You remember definitely him saying that? A. Yes, sir.

Q.137. I understood you to testify a while ago that it occurred to you that the strained relationship was such that Mr. Street might want to employ other counsel than Hicks and Folonie. Did I understand you correctly? A. I made that, if I may be permitted, sir, I made that statement in answer to a question which had to do with—

The Special Master: Whether you conceive of any reason why he would need the money.

A. And I said at the time I regretted to have to answer that question for a very obvious reason.

Q.138. (By Senator Hollingsworth) When he asked you to make the checks to Hicks and Folonie, you knew then, didn't you, or at least assumed that he didn't want to employ other counsel with it? A. I didn't know what his purpose was.

Q.139. Didn't you assume that? A. No, I assumed, as I stated before, that because of this relationship that I knew of, and in answer to a question which you asked me, could I conceive of any reason, I endeavored to explain that relationship. Now, whether that was generally known to the others present or not, I don't know.

Q.140. But when he told you that the checks could be made to Mr. Folonie or Hicks and Folonie, you never had any idea in your mind then that he wanted it for the purpose of employing other counsel, did you? A. No, sir.

The Special Master: By the way, that is not at all inconsistent with his former answer. His former answer was "Can you conceive of anything now?"

A. Yes.

The Special Master: Now, you asked him, did he have that in mind at the time, and he says, "No."

Mr. Bullitt: That is the distinction I was trying to make.

The Special Master: But we have to wait until it comes up before you can make it.

Q.141. (By Senator Hollingsworth) With the exception of using the $100,000.00 for the employment of counsel other than Hicks and Folonie, can you conceive of any legal expenses necessary for a legitimate compromise of this case? A. Well, I am not sufficiently mentally alert to follow that question.

The Special Master: Read it over to him.

Mr. Bullitt: I can hear the question but I didn't hear the answer.

The Special Master: He didn't give an answer. That is the reason.

Senator Hollingsworth: He said he wasn't sufficiently alert to follow that question. Read it to him. (Question read.)

A. My answer to that is, "No."

Q.142. And you knew, didn't you, that when he said that the checks could be made to Hicks and Folonie or Folonie, that it wasn't to be used for the purpose of employment of other counsel? A. I did not.

Q.143. You didn't know that then? A. No.

The Special Master: Of course in this particular meeting you really had no function to perform, did you?

A. Not at all.

The Special Master: You didn't represent any company that was asked to put up any money?

A. No, sir.

The Special Master: And you weren't asked to put up any money?

A. No, sir.

The Special Master: And you had no supervision over what would be done with the money?

A. I have not, but as a matter of fact, I shouldn't be in the meeting.

The Special Master: But you were just good friends and you just sat in anyway?

A. Well, I butt into a lot of situations.

The Special Master: You knew them all?

A. Oh, certainly.

The Special Master: He hadn't asked to meet with you?

A. No.

The Special Master: But they were in your office, and—

A. (Interrupting) I just walked in.

The Special Master: Yes.

Q.144. (By Senator Hollingsworth) Well, you did attend to the assembling of the checks, didn't you? A. The checks, as I recall, were sent to this office by previous agreement with Mr. Street, and he asked me to mail them to Chicago to him.

Q.145. Who made the agreement with Street to send them here? A. Well, as I recall, as these men volunteered these various amounts, Mr. Street suggested that they send them over to this office and that I would send them in one batch to him in Chicago.

Q.146. Did they come in that day or the following day? A. As I recall, some came in that day and they may have all come in that day, but I am not—

Q.147. Well—

Mr. Murphy (Interrupting): Let him finish.

A. What did you say? My answer is that I don't recall whether they all came in on that day or some came in the next morning, but I know that as soon as they came we put them in an envelope and sent them to Mr. Street.

Q.148. (By Senator Hollingsworth) Did you send him a letter transmitting them? A. No, sir.

Q.149. You just put in an envelope checks aggregating sixty odd thousand dollars and mailed them to Mr. Street without any letter of transmittal? A. That is right.

Q.150. Why did you do that? A. I didn't think that a letter of transmittal was necessary. He knew what they were and the amounts and what they were for and everything else.

Q.151. Did you make any memorandum in your office anywhere that you had received these checks? A. As these checks came in, I checked off on this little slip of paper, which was about that way (indicating).

Q.152. Which, I understand, is gone? A. Gone, and when the checks which I was to receive arrived, the list was finished and I put the checks in the envelope and off they went.

Q.153. Did you keep any record or memorandum of the transmittal of the checks in any way? A. No, sir.

Q.154. Was there any purpose in your not making a record or sending a letter? A. No, sir.

Q.155. So if some man would thereafter have claimed that he delivered you a check, you have no way

of showing that you had received it or you had sent it out? A. I think that is correct.

The Special Master: None of the checks were payable to you?

A. Oh, certainly not.

The Special Master: The transaction would have been identical if the companies had mailed them to Mr. Street?

A. Exactly.

The Special Master: He either would have received them or he wouldn't have received them?

A. Yes.

The Special Master: If the check got lost, the only way to correct it would be to stop payment on that and issue another?

A. That is correct.

The Special Master: In the other event you didn't have to clear anything across your books?

A. No, sir.

Q.156. (By Senator Hollingsworth) How did the checks come to you, by letters of transmission or by messenger? A. I believe they came by messengers.

Q.157. So the companies, so far as you know, other than the check itself, had no record of the transmission of the check to you? A. There may have been letters of transmittal to Mr. Street. I don't recall whether there were or not. If there were letters of transmittal, those were included with the checks and sent to Mr. Street.

Q.158. Well, was there any reason why the companies didn't mail the checks direct to Mr. Street? A. None that I know of.

Q.159. Time was an element, wasn't it? A. All I know is that Mr. Street asked to have the checks sent here, assembled in one spot, and presumably put in one envelope. That is all I know about it. It didn't occur to me to even think about it one way or the other.

Q.160. Then did Mr. Street leave immediately when the meeting ended? A. So far as I recall, the meeting broke up and there were a few minutes' visiting or something of that sort, and they all left.

Q.161. Mr. Street included? A. Yes, sir.

Q.162. Now, the list was prepared at the table during the meeting? A. Mr. Street handed me this little list, either at the close of the meeting or immediately afterwards because he was sitting here and I was sitting right down the line some place.

Q.163. And you kept it until you had received the checks? A. That is correct.

Q.164. And then after mailing the checks in an envelope without any message of any kind, you destroyed the memorandum? A. Without any message from me to Mr. Street.

Q.165. That is what I mean. A. That is right.

Q.166. That was on May 2, 1935? A. Yes, sir.

Q.167. What was the next thing you heard about the compromise? A. I assume that the next I heard about the compromise is probably when it was published in the paper.

Q.168. Let me ask you this: Did you go out and get any of these checks? A. I did not.

Q.169. You had no communication with Mr. Street from then on until you saw the compromise in the newspapers? A. That is correct.

Q.170. Did you have any information by way of a telegram of a change of the terms of the compromise? A. No, sir.

Q.171. Before it was actually executed? A. No, sir. Now, will you read that again?

Q.172. Maybe I didn't make myself clear. A. I know what you mean, but you asked me—I did not, but I know of such a telegram.

Q.173. In other words, when Mr. Street was there, he had an idea of 90 and 10? A. That is as he stated.

Q.174. And the compromise was later 80 and 20? A. Yes, sir.

Q.175. And I believe you stated you didn't have any notice of the change of those terms until you saw that the compromise had been effected? A. Oh, no.

The Special Master: No, he didn't say, he said he received no such word, but he knew of the existence of the telegram.

Senator Hollingsworth: Oh, I didn't follow you.

The Special Master: Am I right?

A. That is correct, exactly. I know about this because Mr. Erskine showed it to me when I came back from out of town. Are you referring to the telegram?

Q.176. (By Senator Hollingsworth) Which appears to be Exhibit 86? A. Yes. This telegram is to Mr. Koop.

Q.177. But did you receive a copy of it? A. I did not.

Q.178. Did it come to your office? A. Yes, Mr. Erskine told me about it. I was away when this particular thing happened.

Q.179. But a copy of it came to your office through what medium? How did it get to your office, if you know? A. Well, I can give you this from memory: Mr. Erskine knows about that. When I came back Mr. Erskine showed me, as I recall, this telegram and said that Mr.—now, this is from my memory—that Mr. Koop had called him up and asked him, Mr. Erskine, if he would communicate to these various people and get their approval to the 80-20 basis instead of the 90-10 basis; that it was finished business when I got back because Mr. Erskine had replied that he had done that and that it was O. K., or words to that effect. May I make another reply?

Q.180. Yes. A. I think the fact that Mr. Street wired to Mr. Koop about this change, instead of to me would be pretty clear evidence that this association had nothing whatsoever to do with it, and I had nothing whatsoever to do with it.

Q.181. You were familiar thereafter with the so-called 30 per cent fund, were you, out of the 80? A. Yes sir.

Q.182. You knew that Folonie and Street acted as co-trustees of this fund? A. Yes, sir.

Q.183. Then you were familiar with the 11 per cent payment out of the 30 per cent? A. Yes, sir.

Q.184. When did you first learn that that dividend was to be paid? A. Well, if you will pardon my not giving exact dates, and my recollection has been refreshed by subsequent activities, I either received a telegram or a telephone message from Mr. Street. I think it was sometime in March.

Q.185. 1936? A. 1936; I am not sure of the day.

Q.186. Where is the telegram? A. I don't recall whether it was a telegram or a telephone call.

Q.187. Have you searched to see whether or not it was a telegram? A. Well, we have no such telegram in our files.

Q.188. But you can't recall whether it was telephone or telegram? A. I can't recall.

Q.189. What information did you get? A. Mr. Street asked me to assemble certain named individuals again on another specified date in this office, which I did.

Q.190. Did that message tell you for what purpose they were to be assembled? A. I don't recall whether it did or not.

Q.191. You know if there was a telegram, you haven't got it now? A. I haven't got it now.

Q.192. Who were those individuals? A. Again this is from memory, Mr. Kurth, Mr. Sturm, Mr.—I recall this distinctly, Mr. Culver was out of town. He was asked to be present, but he was out of town. Mr. Warner, Mr. Parsons and I don't recall anybody else.

Q.193. What date did he ask you to call the meeting? A. I don't recall.

Q.194. Is there any way to fix that date? A. Not by me, sir.

Q.195. Well, you called them? A. Yes, sir.

Q.196. And they met? A. And they met.

Q.197. Where? A. Right here. Oh, I am sorry, Mr. Koop also. Now, Mr. Koop was here. I don't know whether Mr. Street asked me to call Mr. Koop or whether he had communicated with Mr. Koop.

Mr. Bullitt: If you want the date there is a way to fix the date if you want it.

The Special Master: Well, we will get to that date later. Let's find out what this witness knows.

Q.198. (By Senator Hollingsworth) Now, you said, though, that you were to call and you said that one or more were absent. I would like for you to state again your recollection as to the persons who were actually present at the meeting. A. Yes, Mr. Kurth, Mr. Sturm, Mr. Warner, Mr. Parsons and Mr. Koop.

Q.199. Did Mr. Street come to your office prior to the meeting? A. Not to my recollection. I think if he came we walked in here and usually when these meetings happen, usually everybody assembles about the same time.

Q.200. Now, please state as fully as you can what Mr. Street said to that meeting. A. As I recall it, Mr. Street stated that the trustees were to make a dividend of 11 per cent and that he needed an additional approximately $350,000.00, which, with the amount that had been advanced by the companies the previous year, certain companies the previous year, would approximate, and I don't recall whether he said $450,000.00, which is 5 per cent, or 5 per cent which is $450,000.00, but it was in that neighborhood, and that checks would go out, checks would be ready for these companies in a short time, and

he asked them to give back to him an amount equaling 5 per cent of their impounded premiums, less previous credit, if there were credits.

Q.201. What else did he say? A. Well, I don't recall.

Q.202. Have you stated the substance of all that was said insofar as you now recall? A. No, this statement, I believe, arose out of a question. Mr. Street was asked whether or not there was any more money going to be needed and he stated that he—

Q.203 (Interrupting) Needed for what purpose, may I ask? A. This was for legal expenses, all this money.

Q.204. How do you know? A. He stated so. He so stated. He said that he didn't know what the total amount of expenses was going to be but that when the litigation was all finished he would make a complete accounting to all companies for the sums received.

Q.205. Now, was there anything else that transpired? A. I think that is the substance of the conversation.

Q.206. Did any man ask him why he didn't pay it out of the fund that had been designated for that purpose? A. Not to my knowledge.

Q.207. And it was after the federal court decree had been entered? A. Yes, sir.

Q.208. Did the thought occur to you that in ordinary course any legal expenses should have been paid out of money that was specifically set aside for that purpose? A. It didn't at that time.

Q.209. And no other persons, so far as you know, expressed that idea or thought? A. Not to my recollection.

Q.210. Did anyone ask him why it was that in May of 1935 he thought $100,000.00 would be all that would be needed; that would enable him to effect the compromise? A. No.

Mr. Murphy: No.

Senator Hollingsworth: He said he needed those fees to—

Mr. Murphy (Interrupting): No, he—

Senator Hollingsworth (Interrupting): Legal fees in connection with the compromise.

A. No, in connection with the Missouri litigation.

Q.211. (By Senator Hollingsworth) He needed $100,000.00 for legal fees? A. For legal expenses, was the term he used, sir.

Q.212. Now, did anyone there ask him why it was that he now needed after the compromise $350,000.00 more? A. Not to my knowledge.

Q.213. You knew that he had adequate funds in the trustees' account? A. Well, I knew that he had 30 per cent of the impoundings in a fund.

Q.214. To pay expenses? A. Yes.

Q.215. When he asked the meeting or told the meeting that $350,000.00 more money was needed, did it occur to you that that fund had been exhausted? A. No.

Q.216. So you believed that that amount of money, $350,000.00, was in the fund, didn't you? A. Yes.

Q.217. And yet you never asked him nor no one else asked him why he didn't take it out of that fund? A. Nobody that I know of, nobody in my hearing, certainly.

The Special Master: Of course, you have to keep in mind that this man was there. He is a competent witness to tell everything that happened, but he was an interested spectator and that was all. He represented no company. He couldn't give authority nor take it away.

A. That is right.

Mr. Bullitt: He wasn't there for anybody.

The Special Master: He wasn't going to put up any money nor could he veto it if anybody wanted to put it up.

Senator Hollingsworth: That is possibly true, but I have this in mind, that thereafter he was very active in raising it.

The Special Master: We have not gotten to that.

Mr. Bullitt: You asked something about why he didn't ask Mr. Street something.

The Special Master: He is undoubtedly a competent witness. While they are getting ready to reorganize, I want to ask you some questions, Mr. Haid.

A. Yes.

The Special Master: I don't agree with you there is anything delicate about talking about the strained relations between Mr. Folonie and Mr. Street.

A. Well, may I say something off the record?

The Special Master: Say it on the record.

A. Oh, well, I hesitate always to bring even into a hearing as important as this, any reference to strained relations.

The Special Master: Well, you are mistaken about that. If you will just take my word about that, that in your attitude about that, it is strained.

A. I am glad to take your word.

The Special Master: It is very important and you are not appearing voluntarily. You didn't come up here offering to spread the gossip. You came here as a sworn witness.

A. Yes, I understand.

The Special Master: To tell things pleasant or unpleasant, and you are not responsible for it.

A. This is rather a new experience for me.

The Special Master: I am trying to explain to you. I want to know more about that strained relation between Mr. Street and Mr. Folonie. I think it is important. How did you find it out?

A. I don't really know now how I found it out. It was more or less a matter of common knowledge of certain people in Chicago, and, well, it is just one of those things that you know about.

The Special Master: There was probably not a man in the insurance world that had freer access to the people that were conducting the fire insurance business in the United States than you on account of your peculiar position?

A. That is right.

The Special Master: You did come in contact with all of them?

A. All of them, yes, sir.

The Special Master: You knew them?

A. That is right.

The Special Master: Most of them rather well?

A. That is right.

The Special Master: And you knew Mr. Folonie rather well?

A. Yes, sir.

The Special Master: And Mr. Street?

A. Yes, sir.

The Special Master: And you saw them oftener, probably, than the actual necessities of your business required?

A. That is right.

The Special Master: If they were in New York, they would call on you whether they had to see you or not, probably; am I right about that?

A. That is correct.

The Special Master: Had you in any conversation either with Mr. Street or with Mr. Folonie, any indications that the relations were becoming strained?

A. Well, as I recall, Mr. Street said to me once, I don't remember whether it was in one of the Western Underwriters' Association meetings in White Sulphur, whether I met him at a governing committee meeting in Chicago, that he was having difficulty with Mr. Folonie.

The Special Master: All right, I want to know about that.

A. And that Mr. Folonie very definitely felt that this case should not be compromised, that the lawsuit was won, as Mr. Street expressed it, and that he felt that if a good compromise could be made or a satisfactory compromise could be made, in the light of the competitive situations and all of the other ramifications of the operation of the insurance business in Missouri, that that was the thing to do, but that Mr. Folonie would not agree with him.

Q.218. Did he show any feeling about the matter? A. Oh, yes.

The Special Master: Go ahead and tell us.

A. Well, Mr. Street, of course, I knew in a business way I never knew Mr. Street socially at all, but in a business way; I succeeded him as president of the Fidelity-Phenix.

The Special Master: Yes, I know you did.

A. I was his subordinate over there for four years. I knew him in a business way rather well. Mr. Street was a very impulsive, very blunt individual. He stated exactly what he thought and he didn't mince words about anything that he had to say.

Mr. Bullitt: Who is that, Street or Mr. Folonie.

A. Mr. Street. Mr. Folonie is totally different. I say that very reluctantly, it is very reluctantly that I talk about it.

The Special Master: I can't defer to you on that.

A. I don't mean to be. I just want to explain why I am making this statement.

The Special Master: I am asking you, did he show any bitterness about the matter?

A. I wouldn't say bitterness, just resentment.

The Special Master: What did he say about it?

A. Well, I think I have told you what he said, that Mr. Folonie wouldn't go along with him, that he wanted to make this settlement and that, well, he was, in effect,

going through with it if the companies would approve it anyhow.

The Special Master: Did that happen before this last meeting with these five gentlemen or afterwards?

A. As I recall that happened, and I don't remember where it happened. I will put it definitely this way: It happened before the first meeting in 1935, the meeting in this office which has been referred to.

The Special Master: So you had some knowledge that Mr. Street himself intended to try to put over a settlement even before he came forward to get this contribution to raise the total of $100,000.00?

A. Oh, yes.

The Special Master: You knew then he had it in mind to make a settlement?

A. Exactly.

The Special Master: Go ahead, Mr. Hollingsworth.

Q.219. (By Senator Hollingsworth) When Mr. Street told you that he was going to try to effect a compromise prior to this meeting in 1935, what else did he tell you about that? A. I don't recall that he said anything. He had been discussing this matter. He told me that prior to the meeting of 1935 he had been discussing the subject with agents and officials, as he termed it, in Missouri, and that he hoped to be able to effect a compromise. I don't recall that at that time he had gotten down to any percentage basis.

Q.220. Now, Mr. Erskine handed in here with his testimony, Defendants' Exhibit 205, as a list of the companies, etc. How did that come into this office, if you know? A. I will tell you all about that. At about the close of this second meeting that we are talking about in 1936, Mr. Street asked me if I would help him make distribution and secure these 5 per cent checks. Well, I said, "I will have to have the necessary information." I hadn't any list of these previous contributions or anything else, and as I recall it, I said in substance to Mr. Street, "If you will send me a list of the companies interested and their total impoundings and the 11 per cent checks, the 11 per cent checks to the companies that you want me to handle, I will endeavor to get them for you." Well, the checks came along in the course of, oh, maybe a week or less or ten days, I don't recall just how many days elapsed, with that list, as I recall.

Mr. Bullitt: Give the number of that.

Senator Hollingsworth: Defendants' Exhibit 205.

A. I am assuming that is the list.

The Special Master: Where was it that you made the offer to help him to collect?

A. Right at this meeting.

The Special Master: The meeting of these five people?

Mr. Bullitt: March, 1936, meeting?

A. This March, 1936, meeting. That list came along, and the checks for certain companies in the East, and a list of the companies who had previously made a contribution in 1935. Up until that time I had never seen a list of the Hartford companies.

Q.221. (By Senator Hollingsworth) Where is the list of the companies that Mr. Street sent you in connection with this Defendants' Exhibit 205, that made the contribution? A. I haven't any idea.

Q.222. So that is gone? A. I guess so.

Mr. Bullitt: It is perfectly available to you. Everybody knows they made the checks. They have the records of every one that paid the checks.

Q.223. (By Senator Hollingsworth) Defendants' Exhibit 206, that was made up in this office, was it not? A. Yes.

Q.224. That doesn't contain, or does it—I don't want to misstate it—that doesn't contain the list of those who made the initial contributions? A. It does not.

Q.225. And the only record you had of those who made the contributions was the list that came with Defendants' Exhibit 205 at the time Mr. Street sent it to you? A. That is right.

Q.226. Mr. Erskine made up this list, 206, or caused it to be made up? A. That is right.

Q.227. You then took it and made calculations and memoranda for each one of the companies whose checks you were handling especially? A. Each one of the groups.

Q.228. Each one of the groups? A. Yes, that is right.

Q.229. Deducting from the 5 per cent assessment the amount of the contribution? A. Of the previous contribution, that is correct. Now, may I explain that a little bit? That is the original copy. I believe there were three copies made. We called that the work sheet. I clipped them off or had them clipped off on a piece of paper as each group and as the checks went out there was either a personal written memorandum by me, show-

ing that calculation, or if companies hadn't made a contribution, showing the amount of impoundings and the amount of their 5 per cent. That is probably why that list isn't here. I have no other reason for it.

Q.230. Now, I notice a memorandum in the corner of Defendants' Exhibit 205 says, "R. J. F. Checks drawn 3/9/36, 6 per cent distribution C. R. S." A. Yes.

Q.231. Is that Mr. Street's handwriting? A. I am not quite sure it is.

Q.232. Can you explain that memorandum? A. You mean can I explain it now or could I explain it then?

Q.233. Did you know what it meant when you saw it on there? A. I did not.

Q.234. This list was made up for the purpose of simply making a net dividend of 6 per cent, the last amount, the net dividend, and over here it has "6 per cent." A. As a matter of fact, I never knew what that column was for. I didn't ask for it.

Q.235. But it came to you that way? A. That is the document that came, yes, sir.

Q.236. And, of course, if Mr. Street had simply or the trustees had simply said a net 6 per cent, the checks could have gone out from his office to all of the companies and your services would not have been required in any event, would they?

Mr. Berger: Of course, I think that is calling upon this witness to state a state of mind or conclusion of the trustees.

A. I know what did happen, that is all.

Mr. Bullitt: It is argumentative.

The Special Master: It is a mere statement.

Mr. Bullitt: It is a mere statement. If they sent out 6 per cent, that is still argument. They still might have been needed in order to get back the credit.

(Whereupon, discussion was had off the record.)

The Special Master: I understood you were objecing to injecting this argument.

Mr. Bullitt: Well, asking the witness.

The Special Master: I agree with you on that.

Mr. Bullitt: Well, that is all, your Honor.

The Special Master: I agree, but it equally applies to the argument you are now making.

Mr. Bullitt: Well, it might, the whole thing is argument.

The Special Master: I think so.

Q.237. (By Senator Hollingsworth) How much of your time was required in effecting the distribution of the checks and procuring the assessment checks of 5 per cent? A. My time personally?

Q.238. Yes. A. I should say maybe two days and a half.

Q.239. Did you make trips out of town in connection with it? A. I went to Philadelphia. That is the only one that I recall.

Q.240. How long did it take you to make your trip to Philadelphia and gather up these checks and deliver the 11 per cent checks? A. Presumably—I have been wondering now why I ever went to Philadelphia.

Q.241. Well, that is in your mind, not mine. A. I wouldn't have gone to Philadelphia unless I had some other business there because there was no point in doing it. I could have done it over the telphone just as easy as I did at Hartford.

Q.242. But went to Philadelphia? A. Yes.

Q.243. How many offices did you call on in Philadelphia? A. If you would let me have that work sheet, maybe I can answer that.

Q.244. I will do that.

Mr. Bullitt: He said how many, if you will call out the different offices.

A. One, two, three offices I think in Philadelphia.

Q.245. (By Senator Hollingsworth) Can you think of any other business that you had in Philadelphia on the occasion you went there and delivered these checks? A. I can not now, no, sir.

Q.246. Did you go to any other cities or towns than Philadelphia? A. No, sir.

Q.247. Did you make personal calls on any companies here in the City of New York? A. Yes, sir.

Q.248. How many companies did you personally call on for this purpose in the City of New York? A. Now, may I look at that again?

Q.249. Yes, sir. A. I am going to have difficulty in determining to whom I went and to whom Mr. Erskine went.

The Special Master: Mr. Hollingsworth, I will permit you to ask that question if you want to, but I would be reluctant to give the testimony any value. If he is depending upon his memory it isn't going to amount to much.

Senator Hollingsworth: I am inclined to think that is true. I will just shorten it up.

The Special Master: The evidence shows that this man went to some of the offices and that Mr. Erskine went to some of the offices.

Senator Hollingsworth: I think you are right.

The Special Master: And if his statement of the number he went to doesn't coincide with the tabulations shown from the witnesses who testified they came to their offices, I would just disregard it as a lapse of memory.

A. Well, I can't remember.

Q.250. (By Senator Hollingsworth) You will say you did call on quite a number? A. Oh, yes.

Q.251. Could you give us in approximately round figures, would you say, ten, twenty, thirty, or what? A. I sent memorandums to some. I didn't call on them at all. I would say five.

Q.252. That is just an estimate, of course. A. Oh, yes, absolutely.

Q.253. Now, one or two other questions and I think I am through. Why was it, if you know, that the meeting was held here to get the approval of this group of five men before actually going ahead with the remittance of the 11 per cent and the assessment of the 5 per cent? A. I don't know, sir.

Q.254. You don't know? A. I don't know.

Q.255. Mr. Haid, did you go to Kansas City during the federal grand jury inquiry down there? A. I did.

Q.256. Did you talk with A. L. McCormack down there? A. Yes, sir.

Q.257. Did you make any statements to him about this case? A. Yes, sir.

Q.258. What were they?

Mr. Berger: We had better object to that as not being competent or binding.

Mr. Bullitt: He asked him if he went to Kansas City to testify before the grand jury and if while he was there he made any statements about this case to A. L. McCormack. He answered that he did and he asked him, what was it? Are you stating what was said before the grand jury?

Senator Hollingsworth: No.

Mr. Bullitt: What did you ask him? Whether he made any statement to McCormack?

The Special Master: There is an objection on the ground that is not admissible. There are two ways I can handle it. One is I can wait until Mr. McCormack's testimony is taken, if ever, and then if it becomes competent, to come back to New York and take this man's testimony over again.

A. I can go to Kansas City any time.

Mr. Bullitt: He can go to Kansas City.

The Special Master: Or I can let you testify now and strike it out if it isn't competent. Right now I can't imagine why the question is competent. If it is, I want you to tell me.

Senator Hollingsworth: I am asking it on the theory that he is president of the Executives' Association, which, under its constitution and by-laws handles matters for the common interest of all of the companies, and that he was there and that his act as president of the Executives' Association is the act of the executives of these companies.

The Special Master: Well, if that is the theory, I will overrule it on two reasons. In the first place, on the ground that he does not represent the companies at all. He is the paid servant of some executives who can use his services or not as they see fit. He has no authority to bind any insurance company. That is one reason why it would not be competent, and another is that even if he represented insurance companies, anything he said to McCormack would be mere hearsay unless it was in due course of transacting business for the insurance companies. Now, you haven't come within 1,000 miles of connecting it up in the way I understand evidence.

Mr. Bullitt: There is a lot more back of that. That may be enough to settle your decisions, but I can give you a lot of other reasons.

Judge Henson: You used the term "overruled." I guess you meant "sustained."

The Special Master: I did mean "sustained."

Senator Hollingsworth: I can't fairly state to you because I don't claim to know what he said, and I can't fairly state to you that I think it is competent because I don't know and understand that state of the record. I couldn't very well insist on it.

The Special Master: Just *prima facie* you have asked him what unsworn statement he made to another man, and that is all there is to it.

Senator Hollingsworth: I know it.

Judge Henson: We agree on the principle.

Senator Hollingsworth: My theory is that any statement that he made with reference to the facts in connection with the raising of this money would be admissible to contradict him.

Mr. Bullitt: But you have to lay the foundation.

Senator Hollingsworth: I agree with you if you will let me state it, but I can't fairly state to the court that I have reason to believe or know that he made any statement at all. Under those circumstances I can't insist on it.

Mr. Bullitt: Mr. Haid will come out any time to Kansas City.

Senator Hollingsworth: I was trying to get it here to avoid, if possible, coming back.

Mr. Berger: You won't need to come back.

The Special Master: I have no idea, sir, to come back, but I can't just take the rules of evidence and throw them out of the window, as a matter of convenience.

Senator Hollingsworth: I will agree.

The Special Master: I will have to sustain it.

Mr. Bullitt: Off the record—

The Special Master: I don't want to hear it off the record. Let's take the testimony and you can tell them afterwards.

Mr. Bullitt: They can use what I say because we don't want to hold back any evidence. If you want it, I will tell you why he went there and everything about it, if you want it, so you can use it. I am perfectly willing for you to use it. It is not confidential at all.

A. I went to Kansas City under a subpoena, under personal subpoena.

Mr. Bullitt: Not only that, but Mr. Milligan—

Mr. Berger: The government invited him.

The Special Master: Don't say it if it is off the record.

Mr. Berger: Let's go on with the hearing.

The Special Master: We are holding an open hearing. If you want it off the record, you had better not say it because it will surely be used.

Mr. Bullitt: I just don't want to be quoted. All right, let it go.

Senator Hollingsworth: I think that is all.

Cross Examination by Mr. Bullitt.

XQ.259. Are you now or were you in 1935 or 1936 or at any time since then a stockholder or an employee or an officer or director of any fire insurance company whatever? A. I am an employee of a whole flock of them.

XQ.260. You mean of the Insurance Executives? A. Yes.

XQ.261. I know, but are you a stockholder in any fire insurance company; were you in 1935 and 1936 or any time since a stockholder in any fire insurance company? A. Under my agreement of employment in 1932 I was requested to sell the stock that I had in any insurance company and not thereafter to be a stockholder in any insurance company so long as I had this position.

XQ.262. Did you do that? A. I did.

XQ.263. Are you a director in any fire insurance company or were you at any time since 1932? A. No, sir.

XQ.264. Or an officer in any fire insurance company? A. No, sir.

XQ.265. And have you ever been an agent for any fire insurance company except as might be inferred from your being president of this Insurance Executives' Association? A. No, sir.

XQ.266. Is that correct? A. That is all.

Mr. Berger: You asked for the trustees for 1935 and 1936.

(Said lists of trustees, handed to the reporter, were marked for identification as "Defendants' Exhibits 207 and 208, EFM.")

Re-Direct Examination by Senator Hollingsworth.

RDQ.267. Mr. Haid, the Defendants' Exhibit 207 has been handed us as a direct list of the trustees of the Insurance Executives' Association of 1935. It is correct, is it? A. I accept it as being correct.

Senator Hollingsworth: I offer that in evidence.

(Which said Defendants' Exhibit 207, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 207.

Trustees Of Insurance Executives Association - 1935

C. W. Bailey
R. P. Barbour
R. M. Bissell
W. H. Koop
Wilfred Kurth
O. E. Lane
F. D. Layton
W. Ross McCain
Edward Milligan
Victor Roth
Benjamin Rush
C. F. Shallcross
Ernest Sturm
Harold Warner
E. W. West"

RDQ.268. And Defendants' Exhibit 208 has been handed us as a correct list of the trustees of the Insurance Executives' Association of 1936, which, I assume, is correct? A. Yes, sir.

RDQ.269. You so recognize it? A. Yes, sir.

Mr. Berger: Mr. Erskine prepared it.

A. Then I know it is correct.

Senator Hollingsworth: We offer in evidence Defendants' Exhibit 208.

(Which said Defendants' Exhibit 208, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 208.

Trustees of Insurance Executives Association - 1936

C. W. Bailey
R. P. Barbour
R. M. Bissell
W. H. Koop
Wilfred Kurth
O. E. Lane
F. D. Layton
W. Ross McCain
Edward Milligan
Victor Roth

Benjamin Rush
C. F. Shallcross
Ernest Sturm
John M. Thomas
Harold Warner"

Mr. Berger: Now, in connection with Mr. Erskine's testimony he was asked as to what companies had cases that were not affiliated in any way with the Insurance Executives' Association. He has prepared here a list of the companies that had cases in the federal court, which companies were not affiliated with the Insurance Executives' Association by having an executive of their company as a member of the association.

Senator Hollingsworth: May that be marked as Defendants' Exhibit 209 and admitted in evidence under your statement?

(Said list, handed to the reporter, was marked for identification as "Defendants' Exhibit 209, EFM," which, being offered in evidence, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 209.

Companies In The Missouri Rate Case In The Federal Courts, *Not Affiliated* With The Insurance Executives Association

British America Assurance Company
Bankers & Shippers Insurance Company
Camden Fire Insurance Association
Chicago Fire & Marine Insurance Co.
Concordia Fire Insurance Co. of Milwaukee
Dubuque Fire & Marine Insurance Co.
Firemen's Insurance Company
Girard Fire & Marine Insurance Co.
Globe & Rutgers Fire Insurance Company
Hudson Insurance Company
Importers & Exporters Insurance Company
The Law, Union & Rock Insurance Co. Ltd.
London & Lancashier Insurance Co. Ltd.
Mechanics Insurance Co. of Philadelphia
Merchants Fire Assurance Corporation of New York
Merchants Fire Insurance Company, Denver
Milwaukee Mechanics Insurance Company
National Ben Franklin Fire Insurance Co.

National Reserve Insurance Company
New Jersey Insurance Company
Northern Insurance Company
North River Insurance Company
Orient Insurance Company
Pacific Fire Insurance Company
Patriotic Insurance Company of America
Presidential Fire and Marine Insurance Company
Safeguard Insurance Company
Standard Fire Insurance Company of New Jersey
Stuyvesant Insurance Company
Sun Insurance Office, Ltd.
Superior Fire Insurance Company
Tokio Marine and Fire Insurance Co., Ltd.
Transcontinental Insurance Company
United States Fire Insurance Co.
United States Merchants and Shippers Insurance Co.
Westchester Fire Insurance Company
Western Assurance Company
Potomac Insurance Co. of the District of Columbia
Svea Fire and Life Insurance Company"

The Special Master: Am I mistaken about it. I don't think I have heard any evidence until Mr. Haid went on the stand about this meeting with the five prominent executives in the insurance world concerning the raising of this 5 per cent?

Senator Hollingsworth: That was my first intimation.

The Special Master: Mr. Kurth has been on the stand but told nothing about it.

Senator Hollingsworth: That is my understanding of it.

The Special Master: He did not tell anything about it, did he?

Senator Hollingsworth: It came as news to me.

The Special Master: This is all new, all right. Now, in that meeting which was some week or ten days, something like that, before you actually collected these checks—

A. (Interrupting) Yes.

The Special Master (Continuing): —acting for Mr. Street, Mr. Street told those five executives that he had to raise a total of about $450,000.00, which, however, included the $100,000.00 that he had already collected?

A. That is correct.

The Special Master: Or approximately $350,000.00 more than the $100,000.00 already collected?

A. Yes, sir .

The Special Master: And when he told them that, he said he wanted their authority? Is that the idea, or he wanted them to know about it or did he just tell them?

A He told me and I assume that he wanted their approval or wanted their acquiescence in contributing the additional money.

The Special Master: There could have been no other reason for the meeting?

A. No.

The Special Master: Because that is all he took up with them?

A. That and the distribution of the 11 per cent.

The Special Master: Now, those were prominent men in the business?

A. Oh, yes.

The Special Master: All executives of big insurance companies?

A. Yes, sir.

The Special Master: Do you say that no one of them asked why it was necessary to raise such a huge sum?

A. Not to my knowledge.

The Special Master: Nobody expressed any surprise?

A. There was a question asked, which I believe I stated, as to whether or not any additional funds were going to be needed.

The Special Master: Yes, I know, but no surprise that this was needed?

A. Not that I recall.

The Special Master: Nobody asked for an explanation for it?

A. Not that I recall.

The Special Master: What did they say, just say "All right"? Or did they say anything?

A. Well, there was acquiescence.

The Special Master: No discussion of it at all?

A. I don't recall any discusson.

The Special Master: Was it news to you when that happened?

A. Yes, I hadn't heard of Mr. Street having stated that additional sums were going to be needed.

The Special Master: Until that meeting?

A. Until that meeting.

The Special Master: If you had still been the president of the Continental and of the Fidelity-Phenix, and as a result that would make a substantial difference to your companies, do you think you would have accepted that statement and said, "Go ahead," without asking how it happened or anything about it?

A. I think in perfect candor that if I had been in the position that you have outlined and Mr. Street made this statement, I would have said, "All right."

The Special Master: You wouldn't have had any curiosity about why it was necessary to raise the $450,000.00?

A. I had absolute, implicit confidence in Mr. Street. I fought with him, and all that.

The Special Master: Which implies you didn't always have implicit confidence in his judgment. Sometimes you thought your judgment was better than his maybe?

A. Yes, sir

The Special Master: So that at least the question of the judgment of the necessity for raising $450,000.00 was involved?

A. But not his integrity.

The Special Master: All right, we will assume that. We will assume that that wasn't involved. Wouldn't you have wanted to know whether $450,000.00 was, in fact, necessary?

A. Well, Mr. Street stated that this additional sum, again, as he had stated in the previous meeting, was for legal expenses in connection with the Missouri litigation, and that statement was accepted by me and I assume by everybody else.

The Special Master: Although you had never heard of it before?

A. Never heard of his desire to raise additional funds?

The Special Master: No.

A. Not until that meeting.

The Special Master: And there had already been a decree rendered which seemed to take care of every possible expense?

A. Yes, sir.

The Special Master: And after that he walks in and says, "Give me $350,000.00 more," and nobody raised a word?

A. Not that I recall, not a word.

Mr. Bullitt: I think you hardly state that correctly, that he wanted $350,000.00 more, because the $350,000.00 was a part of this fund that was arranged for to take care of expenses.

The Special Master: That is just exactly what it wasn't. It came out of it, but it was obviously not $350,000.00 mentioned in the decree?

A. That is right.

The Special Master: If it had been mentioned in the decree there would have been no necessity to take it up with anybody because the federal court had entered the decree to take care of all that. It was evidently something that the federal decree didn't provide for.

Mr. Berger: Just a minute, you are going on the wrong hypothesis. The federal decree didn't say anything except 30 per cent was to be paid to trustees.

The Special Master: That is right but they had that money. Now, there was some reason why he had to get $350,000.00 in his hands, not in the way provided by the federal decree.

Mr. Bullitt: Mr. Master, I hate to disagree with you but your question, I think, assumes a state of fact that isn't correct. The decree said $2,700,000.00 was put in the hands of the trustees and the trustees were to apply that to authorized legal expenses.

Mr. Berger: No, the decree doesn't say that.

Mr. Bullitt: But the agreement did.

Mr. Berger: The trust agreement made afterwards.

Mr. Bullitt: Then what really was happening was that Mr. Street was getting from the companies the authority to disburse himself a portion of that which the trust agreement provided for the trustees to disburse for legal expenses.

The Special Master: That is not the way it impressed me. It doesn't impress me that way.

Mr. Bullitt: That is a question of argument later.

The Special Master: He was making an arrangement to get this money from the companies.

A. Definitely.

The Special Master: Yes. Now, he had the 30 per cent in his hand, you knew that?

A. Oh, yes.

The Special Master: Which would amount to a good deal of money?

A. Yes.

The Special Master: You might not have had it in your mind there was $2,700,000.00, but you had it in your mind it was a good sum of money?

A. Yes.

The Special Master: But he wanted to get this from the companies themselves?

A. That is right.

The Special Master: And that did not arouse a single inquiry?

A. Not to my knowledge, not in my hearing, sir.

The Special Master: It just went off like a routine piece of business?

A. Yes.

The Special Master: Did you get the impression that they already had some idea that there might be some request of that kind?

A. No.

Mr. Murphy: I think you are looking, Mr. Barnett, with hindsight rather than foresight.

The Special Master: Yes, I want to find out how much foresight they had. That is just exactly what we are trying to do.

(Whereupon, discussion was had off the record.)

Mr. Berger: You overlooked the fact that $992,000.00 was taken out of that fund by the 11 per cent.

The Special Master: I know that, but the result was that they got it out of that trust fund and got it into the hands of the companies and then asked the companies for the money. That never occurred to you that there was anything funny about it at all?

A. Never at all.

The Special Master: You didn't ask him why he wanted to do it that way?

A. Not that I recall.

The Special Master: All right.

Re-Cross Examination by Mr. Bullitt.

RXQ.270. Well, the effect of it was that Mr. Street instead of Street and Folonie was disbursing to the extent of the $350,000.00, is that it? A. How is that?

RXQ.271. I say, the effect of it was that Mr. Street disbursed the $350,000.00 because he told them it was legal expenses instead of having Street and Folonie disburse it as legal expenses; that is what it amounts to? A. Why, I assume that.

RXQ.272. Isn't that it, that Mr. Street got the companies to let him disburse it instead of having it dis-

bursed by himself and Folonie under the trust agreement, is that right? A. I guess so.

RXQ.273. I think so. That is the way it struck me, but I don't know whether that is right or not.

The Special Master: It never occurred to you Mr. Street was trying to get around Mr. Folonie or avoid the necessity for Mr. Folonie's approval?

A. Now, there is another thing. At that meeting Mr. Street made the statement—I asked him, I think, this question: I think this is perhaps something else that I had overlooked.

The Special Master: All right, that is what we are trying to find out.

A. I asked Mr. Street, "To whom are these checks to be made payable?" "Oh," he said, "make them to me as agent or if some companies want to make them to Folonie, it is all right, better make them to me as agent." I think those are almost his exact words, and when some checks came in, of which you are aware, made payable to R. J. Folonie and something, I don't know what it is, attorneys?

The Special Master: Yes.

A. We didn't question them; we sent them right on to Street.

Mr. Bullitt: That is the Meserole Company.

A. Whichever it is, they sent their checks in R. J. Folonie, Attorney.

The Special Master: Some of them did, there is no doubt about that.

Mr. Bullitt: That is a fact.

Judge Henson: Six or eight of them.

Mr. Bullitt: Came to R. J. Folonie. Did you mail them to Folonie or Street?

A. Mailed them to Street.

The Special Master: That is all.

(Witness excused.)

Whereupon, the further taking of testimony in said case was adjourned to ten o'clock a. m. of Monday, August 7, 1939, at the Bond Hotel, Hartford, Connecticut.

MORNING SESSION, MONDAY, AUGUST 7, 1939.

Pursuant to adjournment as aforesaid, at ten o'clock a. m. of said Monday, August 7, 1939, at the Bond Hotel, in Hartford, Connecticut, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

ROBERT R. CLARK, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. What is your present position with the Caledonian Insurance Company? A. Manager.

Q.2. Is that a Scottish or English company? A. Scotch.

Q.3. You are manager in the United States? A. That is right.

Q.4. How long have you been manager in the United States? A. Twelve years, approximately.

The Special Master: Did the Caledonian have any affiliates in litigation?

A. Not in the federal case. We had in the state case our subsidiary, the Caledonian-American.

Q.5. (By Judge Henson) Mr. Clark, I will ask you if you were present in a meeting in the Aetna Fire board room on Friday, May 3, 1935, in which the Missouri insurance rate compromise was discussed? A. Yes.

Q.6. Can you name others who were present? A. I won't attempt to recall all of those who were present.

The Special Master: Which is the May, 1935, conference?

Mr. Bullitt: May 3rd, after New York.

Q.7. (By Judge Henson) By "Aetna Fire board room" I mean here in the city of Hartford. A. That is right.

Q.8. Do you recall that Mr. Ross McCain was there of the Aetna? A. I wouldn't say definitely that he was or was not at this time.

Q.9. Do you recall whether Mr. Layton of the National was present? A. I wouldn't recall.

Q.10. Do you recall whether Mr. Milligan and Mr. Long of the Phoenix were present? A. Long was there. I wouldn't say whether Milligan was there or not.

Q.11. Do you recall whether Mr. Bissell of the Hartford was present? A. Not at this time, no.

Q.12. Do you recall whether Mr. Stinson of the Automobile Standard was present? A. I believe he was.

Q.13. Do you recall whether Mr. Vreeland of the Scottish Union & National was present? A. I do now, yes.

Q.14. Do you recall whether Mr. Safford of the Travelers was present? A. I do not.

Q.15. Do you recall whether Mr. Kingan of the London & Lancashire was present? A. I believe he was.

Q.16. Do you recall that Mr. Charles R. Street, vice-president of the Great American and chairman of the Actuarial Committee, was present? A. He was there.

Q.17. So, as far as you recall, Mr. Long, Vreeland, Mr. Kingan, and Mr. Street and yourself and Mr. Stinson— A. (Interrupting) There were undoubtedly other gentlemen there, but I am not clear as to which ones they were at this time.

Q.18. You wouldn't say that Mr. McCain and Mr. Layton and others that I have recalled to you here were not present, would you? A. I would not.

Q.19. About what time of day was that held? A. My recollection is it was in the latter part of the afternoon that I got over there, late in the afternoon.

Q.20. From whom did you get your notice of the assembling of this meeting? A. That I don't recall.

Q.21. What time of the day was it held? A. I say I think I got over to that meeting in the latter part of the afternoon, as I recall.

Q.22. Did you know Mr. Charles R. Street prior to that time? A. Knew who he was.

Q.23. Who was he? A. He was the Western manager and vice-president of the Great American Insurance Company.

Q.24. Do you know him as chairman of the Subscribers' Actuarial Bureau? A. I knew he was the chairman of that committee, yes.

Q.25. Do you know what connection that committee had with the Missouri rate litigation in which your company was engaged? A. We looked upon them as the representatives of the company over the period of time that litigation was involved.

Q.26. Your company had a suit there in the federal court in Missouri along with 136 or more other companies, didn't it? A. We were involved, yes.

Q.27. You had impounded premiums as a result of that litigation, I suppose? A. Yes.

Q.28. And you knew that. You were there when the meeting began, were you? A. I don't think I was, as I recall. I got in during the meeting.

Q.29. When you got in who, if anybody, was talking? A. Well, as I recall it, Mr. Street was making remarks at the time.

Q.30. What was Mr. Street saying? A. The facts, as I recall, that he was explaining, were that they were negotiating a compromise or a compromise was being considered, and that they would require additional funds for legal expenses, and that the companies were asked to contribute a certain sum, $100,000.00, the Hartford Companies to make up a certain portion of that, and we were subsequently allotted certain sums which to me, of course, as far as mine was concerned, was rather out of line with our interest in the case, but it was explained there would be a reapportionment when an accounting would be made and a final analysis.

Q.31. Do you recall what the total amount of the impounded premiums of your company was up to May 1, 1935? A. As I recall, it was under $10,000.00, very nominal.

Q.32. Would $9,910.15 apparently be the amount? A. Whatever the records show would be.

Q.33. I think— A. (Interrupting) Yes.

Q.34. (Continuing) —this Grand Jury exhibit is one that was prepared for your company by someone, and this I have been given to understand, is the outer sheet of your file, and that shows the total impoundment to be $9,910.15. A. Yes.

Q.35. Do you think that is correct?

Mr. Berger: The total impoundment to May 1st?

Judge Henson: Yes, to May 1st. I asked that in my question a while ago.

A. To May 1, 1935, yes.

Q.36. (By Judge Henson) I will get you to go on now and state what more was said in regard to the raising of this money. A. Those are the facts, as I recall them, embodied in the remarks that were made. I don't recall anything additional.

Q.37. Do you recall how much money Mr. Street was trying to raise? A. Well, I have known subsequently, and I can't say clearly whether it was clearly in my mind at the time of the meeting, that there was to be a total of $100,000.00.

Q.38. State whether or not anything was said about a meeting in New York the day before with some of the insurance executives in New York. A. I don't distinctly recall whether the conversation—whether the remarks indicated the meeting was the day before or was to be the day after. There was mention that it would be explained to the executives in New York that there was an opportunity of compromise.

Q.39. If I understand you, then, you didn't get a very clear impression as to whether the New York meeting had been held or would be held? A. That is correct.

Q.40. Do you recall anyone asking that question as to whether the meeting had been held or not? A. I do not.

Q.41. How was it ascertained that this money should be raised here at Hartford? A. I don't quite follow your question.

Q.42. How was it contributed, the sums the Hartford Companies would contribute to these funds? Was there any percentage basis or how was it? A. It was not a percentage basis. You mean how was it allotted?

Q.43. Yes. A. Arbitrary, to raise a certain figure among those present.

Q.44. Who suggested the figure which the Hartford Companies would contribute? A. I cannot say.

Q.45. Who suggested the figure? A. I can't tell you who told us, but I found out from someone, whoever it was mentioned the allotment that was ours was to be $2,000.00.

Q.46. Your companies' was to be $2,000.00? A. I think it is all referred to in that correspondence there that you have the copies of.

Q.47. Now, Mr. Clark, what terms of settlement were discussed there, that is, were the companies to get it all back or were the policyholders to get some or what was discussed? A. I have a recollection that there was a mention made of 90-10 to be hoped for.

Q.48. Who suggested that? A. I assume Mr. Street made that remark as he was the representative of the committee that was there to explain that there was a compromise in the office.

Q.49. Did Mr. Street say with whom he had been negotiating prior to that time? A. No, sir.

Q.50. He never called any names of any officers? A. Not to my knowledge.

Q.51. Of anybody in Missouri, that you recall? A. No, sir.

Q.52. Did he make any further explanation of what he needed this $100,000.00 for? A. Except as I have intimated, legal expenses.

Q.53. Did he tell you particularly what legal expenses it would be? A. No, sir.

Q.54. If I understand you, he said that he had been negotiating and would like authority to further negotiate

with someone. Will you please state again just what he said to the effect that he had been negotiating? A. I wouldn't attempt to quote Mr. Street, but I will tell you my recollection of the facts.

Q.55. Yes, sir. A. Was that he was working on a compromise which was very gratifying news to me, to say the least, and that it would require additional legal expense and this fund was for that purpose.

Q.56. He didn't say with whom he was working? A. No, sir.

Q.57. On the matter of compromise? A. No, sir.

Q.58. Did he name any lawyers on the other side, that is on the Missouri side of this controversy, with whom he had negotiated? A. No, sir, not to my knowledge.

Q.59. Did he leave any idea in that meeting, so far as you could gather, that he had been talking to Missouri lawyers, the Missouri lawyers representing Missouri in the rate litigation? A. No, sir.

Q.60. So that you attended the meeting and left the meeting without any particular knowledge as to with whom he was negotiating? A. Absolutely.

Q.61. Now, what was to be the alternative in the event the negotiations which he proposed to carry on should fail? What should become of your money? A. Why, we would naturally expect an accounting later on of whatever funds were distributed in the manner that is usual.

Q.62. It was distinctly understood, wasn't it, that if the compromise didn't go through you would have your funds back? A. I wouldn't say so.

Q.63. You didn't get that understanding? A. I wouldn't say so.

Q.64. Then do I understand that you were paying $100,000.00 or the companies were, win, lose or draw? A. I didn't understand we were going to pay $100,000.00. It might be a portion of it. It might be more. That was a fund that was needed at that time to start additional legal expenses in this compromise, according to what I gained from what was said.

Q.65. State whether or not he made it clear that $100,000.00 was needed immediately. A. Yes.

Q.66. Did anybody ask him what it was needed for? A. I don't know. Not to my knowledge. He had already intimated that.

Q.67. Did it occur to you that any need that you would have of money that would be necessary to effect a compromise? A. Repeat that, please.

Q.68. Did it occur to your mind any particular need that there would be for this money in order to effect a compromise of a lawsuit? A. For legal expenses.

Q.69. Well, what legal expenses had you in mind? A. I had none, no particular legal expenses in mind.

Q.70. You knew, didn't you, that the Western Rating Bureau and the Subscribers' Actuarial Committee were assessing the companies from time to time for the companies' expenses for their lawyers, didn't you? A. For those that had been in?

Q.71. Yes. A. Yes.

Q.72. Did it occur to you at that meeting that it was Mr. Street's expectation to hire other lawyers? A. That was my impression.

Q.73. Did he suggest the names of any other lawyers that he could hire? A. No, sir.

Q.74. Well, did he make any suggestion that those that he had in mind could do a better job than the ones that you had, or anything to that effect? A. No, sir, not to my knowledge.

Q.75. When did you pay the $2,000.00 that was assessed? A. May I refer you to the copy of the letter that you have there? That is a full record of what transpired from then on so far as we are concerned.

(Photostatic copies of letters, handed to the reporter were marked for identification as "Defendants' Exhibits 210 to 213, EFM," both inclusive.)

Q.76. I show you this Defendants' Exhibit 210, and ask you if that is a photostatic copy of a letter which you wrote to Mr. Long. A. Yes.

Judge Henson: I now introduce Exhibit 210 in evidence.

(Which said Defendants' Exhibit 210, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

May 3, 1933

Private

Mr. George C. Long, Vice President,
Phoenix Insurance Company,
Hartford, Conn.

EXHIBIT 23
JUN 17 1938

Dear Mr. Long:

In accordance with agreement reached this afternoon, we are enclosing our check in the amount of $7,000, payable to Charles R. Street, Chairman, being advance payment in re Missouri litigation. This check, I understand, you will forward to Mr. Street with others received for the same purpose.

Thanking you for the courtesy of transmission, I am

Yours very truly,

Manager.

D 210
Ltd

(Photostatic copy of a check, handed to the reporter, was marked for identification as "Defendants' Exhibit 214, EFM.")

Q.77. (By Judge Henson) I show you Defendants' Exhibit 214, and will ask you whether or not that is a photostatic copy of the check and the endorsements. A. Yes.

Q.78. I mean by that, the check accompanying letter 210. A. Yes.

Q.79. And that check went with the letter? A. That is right.

Judge Henson: I offer in evidence Defendants' Exhibit 214.

(Which said Defendants' Exhibit 214, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

EXHIBIT 75
MAR 17 1939

Q.80. (By Judge Henson) Now, Mr. Clark, state whether or not you were later given to understand that a compromise was made. A. When?

Q.81. Well, I will ask you when. A. I don't think I quite—

Judge Henson: Please read the question. (Question read.)

A. Well, that covers a lot of space of time.

Q.82. (By Judge Henson) Fix it anywhere on earth from there to now. I asked you if you ever heard of it. Maybe you haven't heard it yet. A. Yes, we have heard of it since.

Q.83. Well, when? A. I would assume it was in the fall of 1936 was my first intimation.

Q.84. State whether or not your company was advised by the Actuarial Committee about February 1, 1936, of the fact that the federal court made an order distributing the funds in pursuance to a compromise. A. My company may have received a notice, but it never came to my attention.

Q.85 Now, what was your understanding, when you did hear of it, as to what in a general way the terms of the compromise were? A. I don't think that I quite get your question. Do you ask me my impression of what I thought of the compromise?

Q.86. I am asking what it was, if you know. A. When I heard of what it was, I was quite satisfied with the basis on which the compromise was rendered.

Q.87. What was the basis that you heard? A. The final compromise?

Q.88. Yes. A. Oh, the 80-20, 30 of which was allotted for expense and 50 to the companies.

Q.89. What was the 20 for? A. For the policyholders.

Q.90. I believe you said at the meeting it was discussed on the basis of 90-10, I suppose you meant 10 per cent to the policyholders? A. That was what I assumed was the thought at the time.

Q.91. Now, state whether or not you heard within the next few days after this meeting in the Aetna board room May 3, 1935, of a telegram which Mr. Street sent advising that the best he could do was 80-20 and whether you were asked about your concurrence in that sort of a compromise? A. That is in there. We had a copy of that. It is in our file there to the Grand Jury.

Q.92. State whether or not you acceded to that compromise at that time? A. Yes.

Q.93. Now, about the 30 per cent which you have mentioned to pay expenses, what was your understanding of what the 30 per cent was, what expenses it was to cover? A. When I heard of it, it was set aside as a fund for legal expenses.

Q.94. That was to cover all legal expenses, wasn't it? A. That I couldn't say.

Q.95. All your lawyers and the lawyers on the state side? A. I didn't know what the terms were except it was set aside for state expenses.

Q.96. Can you fix a little more definitely just when you had that information? You say you don't remember receiving it shortly after the federal court decree, February 1, 1936. Now, when, with reference to that date do you think you first heard of it? A. I say I think my first recollection was in the fall, as borne out by the correspondence when we wrote and said we had heard there was a distribution of funds, and asked to participate. I was in Europe in the spring of 1936. It was sometime in the latter part of—I don't remember the date. It will show there when somebody told me they understood there had been a distribution in connection with this original fund that was put up, and we wrote and asked Mr. Street about it, and the correspondence supports everything that transpired after that.

Q.97. I show you Defendants' Exhibit 211, and ask you whether or not that is a photostatic copy of a carbon copy of a letter which you wrote to Mr. Street November 19, 1936. A. That was written from our office, signed by our chief accountant.

Judge Henson: I now introduce Exhibit 211.

(Which said Defendants' Exhibit 211, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

November 19, 1936

C. R. Street, Vice President
Great American Insurance Co.
310 South Michigan Avenue,
Chicago, Illinois

Dear Sir:

We understand that an adjustment has been made in reference to expenses in connection with Missouri impounded premiums, and that some Companies have been refunded an amount on the advanced payment covering legal services.

As we have not received a refund or advices regarding an adjustment, we would be pleased to have any information which you may be in a position to furnish us, as we are anxious to dispose of this item during the current year.

Yours very truly,

E:K

Chief Accountant

GRAND JURY'S
EXHIBIT 26
MAR 17 1939

D 211

Q.98. (By Judge Henson) I now show you Defendants' Exhibit 212 and will ask you whether or not that is a copy of the reply you received from Mr. Street to the last letter we have mentioned. A. That is a photostatic copy of the letter we received from Mr. Street in reply to our letter.

Q.99. Now, I show you Defendants' Exhibit 213 and will ask you if that is a photostatic copy of your letter to Mr. Street then in acknowledgement of the last letter which you mentioned. A. That is right.

Judge Henson: I now offer in evidence Exhibits 212 and 213.

(Which said Defendants' Exhibits 212 and 213, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

STREET
Vice President

G. D. GREGORY
Secretary

Great American Insurance Company
New York

NOV 25 1936

WESTERN DEPARTMENT
[illegible]
POST OFFICE BOX 782
CHICAGO

November 23, 1936.

CALEDONIAN INS. CO.
R. R. C. Mgr.

Dear Mr. Clark:

I intended to see you and explain this matter in person sooner but it has been impossible to do so.

A letter from your Chief Accountant, B. F. Eldredge, refers to Missouri.

I personally advanced a certain lot of money in this connection and a little more does not make any difference - expect to have it all back by March 1st - so here is my check for the $2000 you advanced and which because it was more than 5% of your impounded premiums Mr. Maid at the time he had all the other checks could not take up with you.

There is also a second check for $1090.12, which is 11% of your impounded Missouri premiums.

Please now send me your check for $[illegible].30, payable to my order, that being 5%, the same as has been collected from the other companies.

Mr. Maid can give you any explanation you need if you will verbally confer with him, or I will do the same thing the first time I see you.

Yours very truly,

C R Greer

Mr. Robert R. Clark, Manager,
Caledonian Insurance Company,
Hartford, Conn.

Confidential

U.S. v. JERRY'S
EXHIBIT 27
MAR 17 1939

D 21 v Gen

November 25, 1936

Mr. C. R. Street, Vice President
Great American Insurance Company,
310 South Michigan Avenue,
Chicago, Illinois

Dear Mr. Street:

I have for acknowledgment your letter of November 23 enclosing your check in the amount of $2,000.00 together with that of the trustees in the amount of $1,090.12, for which please accept my thanks.

Check is enclosed in the amount of $495.50 payable to your order, representing 5% of our proportion of advanced fees.

Yours very truly,

E:K
Enclosures

Manager

GRAND JURY'S
EXHIBIT 28
MAR 17 1939

D 213

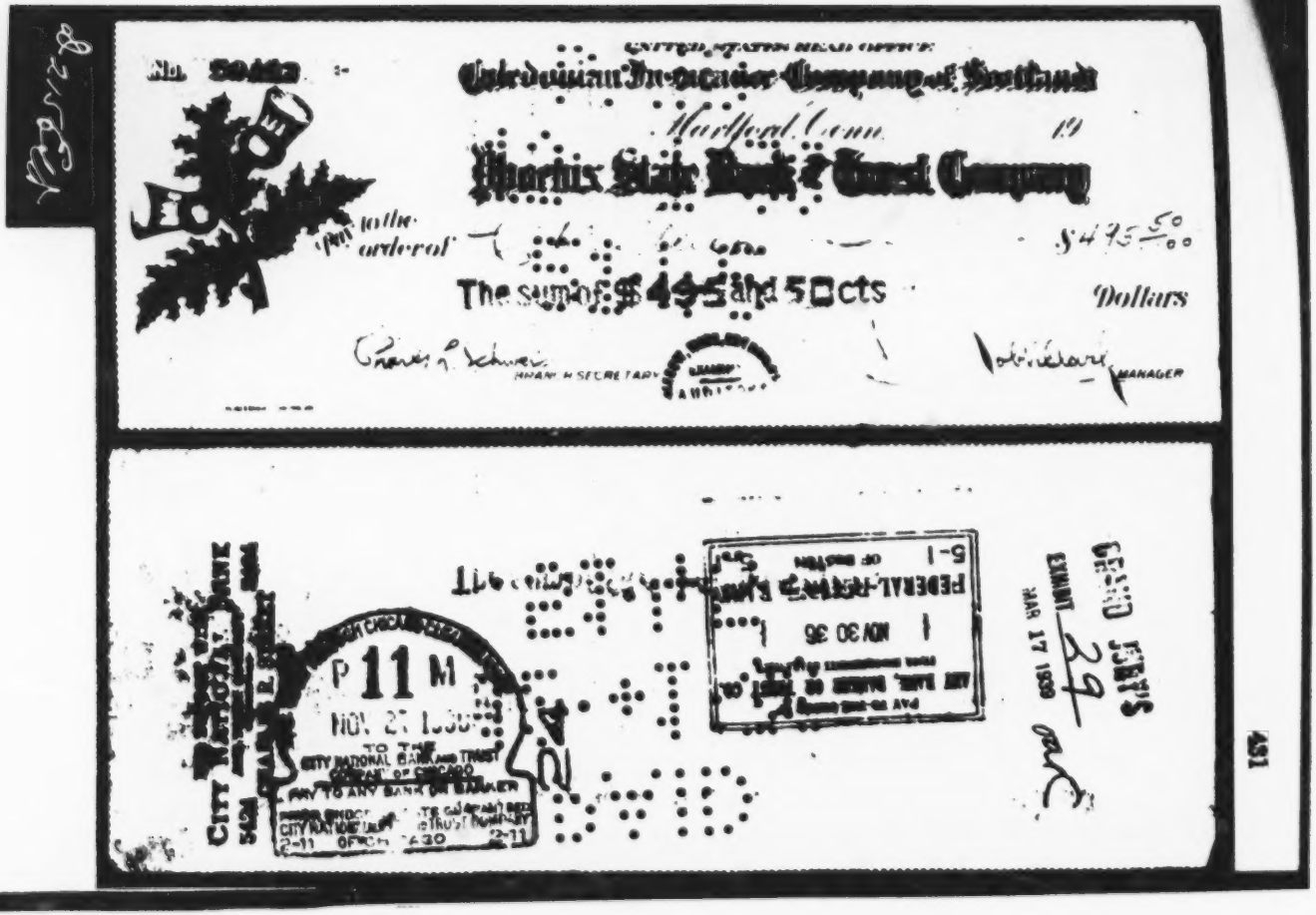
(Photostatic copy of check and receipt, handed to the reporter, were marked for identification as "Defendants' Exhibits 215 and 216, EFM," respectively.)

Q.100. (By Judge Henson) Now, I show you Defendants' Exhibit 215 and will ask you whether or not that is a photostatic copy of a check which you made to C. R. Street for $495.50 with the endorsements on it. A. It is.

Q.101. And I assume that check was sent to Mr. Street in November? A. The letter refers to it and there is the receipt from him as chairman for the amount.

Judge Henson: I offer Exhibit 215 in evidence.

(Which said Defendants' Exhibit 215, so offered in evidence, having been previously duly marked, is in words and figures as follows:)


No. 20453
Hartford, Conn. 19
Phoenix State Bank & Trust Company
Pay to the order of
The sum of $495 and 50 cts
Dollars
$495.50
MANAGER
P 11 M
NOV 27
TO THE
CITY NATIONAL BANK AND TRUST
COMPANY OF CHICAGO
PAY TO ANY BANK OR BANKER
CITY NATIONAL BANK
FEDERAL RESERVE
NOV 30 36
PAID
MAR 17 1939
451

The Special Master: Did he write a letter with it?

Judge Henson: Yes, it is this letter back here that has been referred to.

Mr. Berger: Are you putting in the receipt?

Judge Henson: I am just right up to it right now.

The Special Master: What is the letter that Mr. Street wrote?

Judge Henson: Here (indicating) is the letter Mr. Street wrote.

Mr. Berger: That is 212, the letter.

Q.102 (By Judge Henson) Now, Mr. Clark, I show you Defendants' Exhibit 216. I believe you said a moment ago that was a photostatic copy of the receipt from Mr. Street as chairman. A Yes, it is.

Q.103. That was for the check for $295.00 which you sent? A. $295.00.

Q.104. I notice the receipt is not dated, but it is a receipt, as you understand it, for the check, Defendants' Exhibit 215? A. Yes.

Mr. Berger: There is a stamped cancellation stamped on the back side of the receipt which gives the date.

Judge Henson: You confused me by the word "cancellation."

Mr. Berger: I mean a receipt stamp which gives the date.

Judge Henson: All right.

Q.105. (By Judge Henson) This cancellation down here which reads: "Caledonian Insurance Company, Paid November 25, 1936, H. M. Dalson, Cashier," that part of the exhibit would indicate that that was the date it was received? A. That is it, yes.

Judge Henson: I offer Exhibit 216 in evidence.

(Which said Defendants' Exhibit 216, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Chicago, Illinois
~~Hartford, Conn.~~ 19 38

Received from the **Caledonian Insurance Co.**

---------Four hundred ninety five and 50/100--------- Dollars
100

Legal expenses re Missouri Rate Case (5% Impounded Premiums)

$ 495.50

H. M. BALLOU.

C.46 7-35 2M

555 ASYLUM ST., HARTFORD, CONN.

UNITED STATES
EXHIBIT 30
MAR 17 1939

PAID

Q.106. Now, would you say that about the time of the receipt of this $495.50 from Mr. Street was the first knowledge you had of the terms of the settlement, that is, 50 per cent to the companies, 20 per cent to the policyholders, and 30 per cent for expenses? You think it was about that? A. It was about that time. That brought the matter before me about that time.

Q.107. Now, was there any other explanation given you except what has been in this correspondence introduced here? A. No, sir.

Q.108. As to what the check was for? A. No, sir.

Q.109. In his letter of November 25, 1936, marked Defendants' Exhibit 212, he returned you his check, didn't he, for $2,000.00? A. Yes.

Q.110. Which had been advanced. Now, then, in that same letter he calls for your check for $495.50, or your company's check payable to his order. Did he ever make any explanation of what that 5 per cent was for? A. No, sir.

Q.111. Did anybody ever explain that to you? A. No, sir.

Q.112. Did you know why you paid it out? A. For legal expenses.

Q.113. How did you know that? A. We expected to have an accounting eventually which would explain it.

Q.114. Now, did you receive a check from him in that same letter referred to for $1,090.12, which was 11 per cent of the impounded funds? A. If it says we did.

Q.115. I refer to this part of the letter right here (indicating). A. Yes.

Q.116. Now, if I get you correctly, on November 25, 1936, he sent you $2,000.00 back that had been put up by your company in May of 1935, then he sends you a check for $1,090.12, which is 11 per cent of your impoundments? A. Yes.

Q.117. I mean impoundments to May 1, 1935. I don't mean to take advantage of you. A. Yes.

Q.118. Then he asked you for a check for $495.50. Did it occur to you to question why he didn't just send you the 6 per cent to begin with? A. No, sir.

Q.119. Now, the $1,090.12 was the check of Street and Folonie, the trustees, from the 30 per cent, wasn't it? A. I don't recall, but the records would indicate it, undoubtedly.

Q.120. That is your impression, that it was from Street and Folonie, the trustees? A. If it is referred to in there. I don't remember it particularly.

Q.121. I am asking if you have any independent memory of it. A. Not offhand. It is easy enough to verify where it came from.

Q.122. Your books would show where? A. Yes, it would show in here (indicating), presumably. It shows every transaction that had anything to do with it someplace.

Q.123. Now, the $495.50 check that was made just to Mr. Street, not as trustee or not as agent, not as attorney or any other capacity, just Mr. C. R. Street— A. Correct.

Q.124. (Continuing) —with the request that the receipt be signed as chairman. A. Which he did.

Q.125. What did you understand he was to do with that $495.00 of your company's money? A. Use it for legal expenses in connection with the case and account to us in the final analysis.

Q.126. Now, he said, "Mr. Haid can give you any explanation you need if you will verbally confer with him, or I will do the same thing the first time I see you." Now, what did you understand by that part of his letter? A. If I wanted any details I could get them either from Mr. Haid or from him, and I wasn't interested in getting them and didn't ask either one of those gentlemen for them.

Q.127. You never did ask Mr. Haid or Mr. Street for any further explanation? A. No, sir.

Q.128. Neither of them ever wrote you a letter anything about it? A. No, sir.

Q.129. Did you tell your Board of Directors about having put up this $2,000.00 there in May, 1935, or the circumstances under which you put it up? A. No, sir.

Q.130. Did you tell anyone else in connection with your company about it? A. No, sir, excepting the members of the staff may have seen it in routine, the clerical staff, of course.

Q.131. It wasn't discussed in your authoritative bodies? A. No, sir, it is not required.

Q.132. Have you authority in your company to pay out money as you care to? A. Yes, sir. Full responsibility is on the United States manager of the British company.

Q.133. Did you report to the head office or home office in England or Scotland, which is it? A. Scotland.

Q.134. Did you report to them the transaction? A. No, sir, not the mechanics of any matter of this kind.

Q.135. Did you make any report to the home office in Scotland about the fact you had paid out $495.00 at the time you made— A. (Interrupting) As an individual payment?

Q.136. Yes. A. Any more than it appears in the records to whom the check is drawn and there is a transcript of the date of the check, no explanation.

Q.137. The check is just payable to Mr. Street. Have you any explanation why you just made the check to Mr. Street? A. Because his letter requested it, and that letter was sent up to the accounting department to comply with his request.

Q.138. Why did you do that, because Mr. Street asked it? A. Yes.

Q.139. That is the reason that you gave for the check? A. Yes, but at the same time requesting that the voucher that we have for our files be signed by him as chairman of the committee.

Q.140. Did you restrict him at all in the use of that $495.50? A. No, sir.

Q.141. Now, I believe you said you knew he was chairman of your committee, or chairman of the Subscribers' Actuarial Committee in Chicago? A. Yes.

Q.142. I believe you said they had been handling this rate litigation there in Missouri? A. Yes.

Q.143. They were handling it on behalf of your company? A. Yes.

Q.144. And whatever Mr. Street wanted to do was all right with you? A. Yes, sir.

Judge Henson: I think that is all I can examine him.

The Special Master: Let me just ask him a question. You say that you sent it to him but asked for a receipt as chairman of his committee?

A. May I explain it this way: Whenever we send any check we put a voucher in requesting that that voucher be signed, and we did it in this case and the voucher was made out with the word "Chairman," and he signed it, as the photostatic copy shows it there.

The Special Master: That is because you knew he was the chairman of this committee of five that had charge of the litigation for all of the companies?

A. That is right, and our first check for $2,000.00 was made to Mr. Street as chairman, the check itself.

The Special Master: Referring, of course, to the fact he was chairman—

A. (Interrupting) Of this committee.

The Special Master: Of five out at Chicago that had charge of the litigation?

A. That is right.

Cross Examination by Mr. Bullitt.

XQ.145. Your $2,000.00 check dated May 3, 1935, to the order of Charles R. Street, went ultimately to whom, as shown by the endorsement on the check? A. You wish me to read?

XQ.146. No, just answer the question. A. "Pay to the order of R. J. Folonie, Attorney, Charles R. Street, chairman."

XQ.147. There is more than that. I say, to whom ultimately did the money go? A. Folonie endorsed and deposited "For deposit of Hicks and Folonie."

XQ.148. Went to Hicks and Folonie? A. Yes, sir.

XQ.149. Who were Hicks and Folonie? A. They had been counsel for the companies for years.

XQ.150. They were your attorneys? A. Yes, sir.

XQ.151. Mr. Street then returned the $2,000.00 to you, didn't he? A. Subsequently.

XQ.152. When you paid to Mr. Street on November 25, 1936, the $495.50 as 5 per cent of your impounded premiums, what did you say to him in your letter to him that it was for, and how did you describe it in the voucher that you had him sign? A. The letter reads—

XQ.153. (Interrupting) Don't read the whole letter. Just describe that. A. We acknowledged his check enclosed of $2,000.00, together with that of the trustees in the amount of $1,090.00, and we enclosed check in the amount of $495.50, "payable to your order, representing 5 per cent of our proportion of advanced fees."

XQ.154. Of advanced fees? A. Yes.

XQ.155. That is what you understood it was? A. That is it, yes.

XQ.156. And at the same time how did you describe that $495.00 payment in the voucher that you sent to him to be signed by him and which he signed? A. "Legal expenses *re* Missouri rate case, 5% impounded premiums," signed by him as chairman.

XQ.157. The interest of your company in this impounded fund was really a very trifling sum? A. Very, very negligible.

XQ.158. Did you or your company ever request Mr. Street at any time to act for you in the conduct of the Missouri litigation? A. As chairman of the committee.

XQ.159. That isn't what I asked you. I asked you whether you or your company or any officer of your company, as far as you know, ever by letter, telegram, telephone or personal conversation, asked Mr. Street to do anything for you? A. No.

XQ.160. In that litigation. A. No.

XQ.161. Did you ever authorize Mr. Street or request Mr. Street or know that Mr. Street was paying out any money whatever? A. No.

XQ.162. To influence anyone, public official or otherwise, to bring about that settlement? A. Absolutely not.

Mr. Bullitt: That is all.

Re-Direct Examination by Judge Henson.

RDQ.163. You say your company never asked Mr. Street to do anything for your company? You just answered him that way. A. Specifically.

RDQ.164. Mr. Street was doing the asking, wasn't he, at this meeting in May, 1935? A. He was reporting progress of the case, setting forth the program that was in the offing, and asking for funds for further legal expenses.

RDQ.165. Your company was interested or you wouldn't have been at the meeting? A. Right. We were in the case.

RDQ.166. At that meeting you put up $2,000.00 which is in excess of 20 per cent of your impoundments? A. Yes, sir.

RDQ.167. Did that ever occur to you that they were talking about compromising it for 90 per cent to the companies and 10 per cent to the policyholders and you were then putting in his hands a $2,000.00 check which was in excess of 20 per cent of all of your impounded premiums? A. I think I intimated earlier in my testimony that I realized there were a limited number of companies that were putting up the original fees, and that a reapportionment on a pro-rata basis would be forthcoming, and so it didn't concern me whether they asked me for $2,000.00 or $500.00 that day.

RDQ.168. You were putting up a considerable portion in excess of what the legal expenses would be. A. We were advancing at that time more than that proportionate part of our interest.

RDQ.169. Why, if you know, weren't other companies called in to carry more of that load so that your little company wouldn't have to put up $2,000.00? A. We weren't putting up any load. We expected full and proper pro-ration later on. It didn't concern us later on. We are frequently, in our business, called upon to advance funds for distribution one way or another, and an accounting to come.

RDQ.170. You were all in the suit and you figured you would get an accounting, and if you advanced too much it would be returned later on? A. Yes.

RDQ.171. It was put up to get this settlement through? A. It was put up in connection with legal expenses in conjunction of a compromise that was in the offing.

RDQ.172. How long have you been in the insurance business? A. 25 or 30 years.

RDQ.173. Have you ever had that experience before or since where money was required to be put up in advance to get a suit compromised? A. I couldn't say offhand.

RDQ.174. That is an unusual situation, isn't it? A. It is not unusual to put up funds.

Mr. Bullitt: I object. That is putting something in the mouth of the witness, assuming something in the question that hasn't been proved.

The Special Master: All right. It is a leading question. You can ask him is it usual or not.

RDQ.175. (By Judge Henson) Is it usual or not to advance fees right on the eve of a proposed settlement? Is that usual or unusual? A. Well, we don't have many cases of this unusual caliber.

RDQ.176. You don't recall any other incident where you were called upon to put up legal fees in order to get a case compromised? A. I couldn't say. We may have in connection with losses, claims. I couldn't say whether it has ever been done before or not.

Judge Henson: I think that is all, except I am going to ask the witness to wait just a little bit until I can look at a little more of this correspondence.

The Special Master: Just look at it right there.

Re-Cross Examination by Mr. Bullitt.

RXQ.177. Mr. Clark, at the time you put up this $2,000.00 in May, 1935, you also had pending, unsettled and unadjusted, a suit in the state court for one of your affiliates? A. Yes.

The Special Master: Of course, the evidence about this adjustment, this witness says that he expected the adjustment and the correspondence shows that he afterwards demanded an adjustment and that he got an adjustment. That is what this testimony shows as to the original $2,000.00 that he put up.

A. On that same score, I might add that it wasn't until I was in the district office, not being concerned because of our money or position, that I realized that we hadn't gotten it all back. In fact, we thought we were one cent ahead when we found out that the two were conflicting. We thought we were fully adjusted and repaid.

(Photostatic copy of a telegram, handed to the reporter, was marked for identification as "Defendants' Exhibit 217, EFM.")

Re-Direct Examination by Judge Henson.

RDQ.178. Mr. Clark, I show you Defendants' Exhibit 217, and ask you if that is a photostatic copy of the telegram of May 16th from Mr. Street regarding the negotiations there at Kansas City to which you referred earlier in your testimony. A. Yes.

RDQ.179. You received that copy? A. Yes.

RDQ.180. At the time it was sent? A. Yes.

Judge Henson: I offer Defendants' Exhibit 217 in evidence.

(Which said Defendants' Exhibit 217, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

COPY

POSTAL TELEGRAPH-CABLE COMPANY

PRESS TELEGRAM

May 16, 1935 A.M. 2.54

NA 10 173 NL-CHICAGO ILL 15
George C. Long (Confidential)
30 Trinity St. Hartford Conn

At Kansas City yesterday with attorneys for both sides and State Officials Situation much changed by Federal decision requiring companies to show refunds in old case paid in full before they decide pending case which means reference to Master and months of work at great expense Decision on vital point in State Court rendered under pressure in our favor but with some bitter judicial comment These things make ninety percent settlement as originally proposed impossible and Governor former Judge has made special study and claims State will win all cases Under pressure is willing to compromise but best can do is eighty per cent. instead of ninety we paying States attorneys agreed amount Our expenses slightly reduced Main part impounded funds to come to companies immediately but twenty percent to State for policyholders balance to me and Polonie as Trustees pending cleanup Considering Missouri situation existing today and large expense necessary in further proceedings recommend this settlement No settlement effective until approved by both Courts Rlease rush copies to Bissell Layton McCain others interested

(signed) C. R. STREET

Phoned Mr. Long advising my approval Bibb 5/16/35

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17 1939

Judge Henson: I understand that copies of this telegram were sent out to the various parties and your office received this copy.

Mr. Murphy: He can only say about himself.

A. We received this copy, yes.

Mr. Berger: That will be identified by Mr. Long as to what was done with it.

RDQ.181. (By Judge Henson) Mr. Clark, outside of these sheets which seem to be photostats of book entries, to which I have made no reference, I will get you to state whether or not these exhibits 210 to 217 are all the documentary matters available in your files relating to this Missouri compromise. A. Yes. Isn't there a letter from our office stating that they were sending it down?

RDQ.182. Yes. A. And that says what they are, photostats of our books.

RDQ.183. If I had your entire records here, therefore, I wouldn't get any more information than is in here? A. I should not know, sir. It was their instructions to furnish all.

(Witness excused.)

R. M. BISSELL, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Where do you live, Mr. Bissell? A. I live in Farmington, nine miles from here.

Q.2. What is your connection with the Hartford Fire Insurance Company group? A. I am president of several of them.

Q.3. Does this group that was involved in the Missouri rate litigation consist of the following companies: Hartford Fire Insurance Company, Citizens Insurance Company, New York Underwriters, Northwestern Fire and Marine, and Twin City Insurance Company? A. I think that is correct. We don't own the Northwestern. We have a contract with them.

The Special Master: Is it under the same group management?

A. My recollection is that Missouri is under the direct management of Mr. Griffin, the president of the company at Minneapolis.

Q.4. Were you president of this group of companies, with the exceptions as you have stated, in 1935 and 1936? A. I was.

Q.5. Do you recall that in May of 1935 or about that time, a matter of a proposed compromise came up for discussion? A. Yes.

Q.6. When was the first information that you ever had that a compromise might be negotiated? A. Well, there had been more or less talk about negotiation ever since the suit started, about compromise, but the first definite talk was the talk that you mentioned.

Q.7. In May of 1935? A. About that time, at the time of that meeting.

Q.8. Did you know Mr. Charles R. Street personally? A. I know Mr. Street for between 40 and 50 years.

Q.9. You knew that he was chairman of the Actuarial Committee? A. Yes.

Q.10. And that he and his committee had charge of this litigation for your company and other companies? A. Yes.

Q.11. Likewise involved? A. Yes.

Q.12. I believe there was a meeting held on about May 3, 1935, attended by a number of gentlemen residing here in Hartford, and Mr. Street was present. A. Yes.

Q.13. Do you recall offhand the names of the men who attended that meeting? A. Only a few. Do you want me—

Q.14. (Interrupting) Will you give us the names of the men? A. There was Mr. Milligan, president of the Phoenix, since deceased; there was Mr. Long, vice-president of the Phoenix Insurance Company. I recall that Mr. Kingan was of the London and Lancashire, and I am quite certain that Mr. McCain of the Aetna was there, possibly another officer of the Aetna, I am not quite sure whether Mr. Sloan was there or not. There must have been eight or ten men, but I couldn't definitely answer.

Q.15. Would it refresh your recollection if I would recall some names? Mr. Layton of the National? A. Mr. Layton, I am quite sure was there.

Q.16. Mr. Bissell of the Hartford. A. That is myself.

Q.17. That is you. Mr. Stinson of the Automobile and Mr. Vreeland of the Scottish Union & National ? A. I am not certain. I think he was there.

Q.18. Mr. Clark of the Caledonian. A. Yes.

Q.19. Mr. Safford of the Travelers, do you remember his being there? A. I do not.

Q.20. How was that meeting called, by letter or telephone? A. My impression is it was called by telephone.

Q.21. Did you have any advance notice of the meeting or did you receive the call and immediately assemble? A. If there was any advance notice it was very brief, not over a day.

Q.22. Now, when you got to the meeting, or before you got to the meeting, did you have any information that some money was to be raised? A. Not at all.

Q.23. When you went to the meeting you had no idea that money was to be raised? A. I didn't have any impression on the subject at all.

Q.24. When you got there, I presume Mr. Street addressed the meeting? A. Oh, yes, he addressed the meeting.

Q.25. Did he open the meeting by making an address to the meeting and telling the purpose of it? A. My recollection is that he did.

Q.26. Would you tell just as fully as you can, Mr. Bissell, the things that he told you at that meeting? A. My recollection is that he said that he thought the time had come when the case should be settled and gotten rid of if it could be done. I think, though I won't—I think that he also said there had been an agitation in favor of the settlement on the part of some companies, not mentioned by him, for a long time and that he had become persuaded that a settlement was a good thing.

Q.27. Did he tell you whether he had discussed a settlement with any of the opposite parties? A. No, I don't think he said so.

Q.28. Can you tell us any more fully what he said? A. He gave us a rather rambling talk, do you want me to give you all of it? Some of it doesn't refer to this matter in a way.

Q.29. What you can. A. He said that he had been doing business in Missouri for some 30 or 40 years, and thought he had more experience and knowledge of Missouri than any other man in the business, and that taking into account the progress of the case and some decisions that had been made, he had slowly and reluctantly come to the conclusion that perhaps it would be a good thing to make a settlement. He talked a good deal about

his knowledge of Missouri and his experience and reputation there. He was a man who had a pretty fair opinion of himself, and was quite positive in his action and he was the sort of man who, if you appointed him chairman of the committee, he was the whole committee.

Q.30. Now, did he tell you what caused him to think that he could make a settlement? A. I don't recall that he did. I inferred that he must directly or indirectly have had some intimation from the other side that a settlement could be effected or else he wouldn't have recommended it. That is only an inference.

Q.31. What did he say about the money? A. He said it would be necessary to approach the people with whom were were litigating through new channels, that our counsel, unfortunately, had gotten himself in the position where the people representing the state would have practically nothing to do with him, hardly speak to him, and that he would have to employ new counsel and it would be quite an expensive matter to bring the thing to a head.

Q.32. Did he name the amount? A. He didn't name any definite amount.

Q.33. Did he tell you that he wanted substantialy $100,000.00? A. I don't recall his mentioning any such definite amount as $100,000.00. He wanted certain contributions from each of us, the companies present.

Q.34. Did he state anything about having to raise some funds or was going to raise some funds in New York? A. He said that my—my strong recollection is that he said he had already been to New York and talked to a number of companies there.

Q.35. Now, Mr. Bissell, did he say anything about whether he felt certain he could effect this compromise? A. Yes, I think he expressed himself quite definitely that he could settle it.

Q.36. I wish you would state as fully as you can the thing that he said about his certainty of being able to effect the compromise. A. I don't think I could really amplify upon what I have already said. He said, "I can settle this case." He said, "I think we have the case won, but I can settle it if the companies want me to."

Q.37. Did he tell you that the money that he raised was to be turned over to Hicks and Folonie, but it was not to be delivered unless the settlement was effected? A. I don't recall any such statement.

Q.38. Did he state the amount that he wanted your companies to contribute? A. My recollection is he said that it was uncertain the amount the companies would have to contribute, but that he wanted from us, from our company, about $10,000.00 at that time, and a rate table proportion from other companies.

Q.39. You gave him $10,000.00? A. We gave him that amount, practically that amount.

Q.40. Now, what was to happen in the event the compromise didn't go through? A. My understanding was the money was to be returned to us less any expenses, of course, that he was to do in the way of employing additional attorneys and anything else that might come up in connection with the work.

Q.41. Did he tell you what other attorneys he was going to employ? A. He didn't name the attorneys, so far as I recall.

Q.42. Did you understand anything about the extent of money? You knew that you were putting up $10,000.00, did he also tell the others there so that you would hear how much they were called upon to contribute? A. I have forgotten whether he read a list of the amounts he would like from each company or whether he spoke those personally.

Q.43. When you left there did you have any impression how much money he was to get out of this Hartford meeting? A. No, I didn't add it up.

Q.44. Do you have any impression now as to how much money he got out of the Hartford meeting? A. No, I haven't. I haven't the slightest impression.

Q.45. I believe you stated that you couldn't be definite whether you learned that he was raising money in New York or not, also. Did I so understand you a while ago?

Mr. Murphy: He testified that he hadn't.

A. I beg pardon?

Q.46. (By Judge Henson) What was your testimony in regard to the New York meeting? A. I said that he said he had already interviewed a group of company officials in New York.

Q.47. Did he tell you that he had raised some money? A. I think he said—he either said that he had raised some money or that he had promises that money would be forthcoming.

Q.48. You understood that your money would come back to you if the compromise was not effected, less whatever expenses he had? A. Yes.

Q.49. Well, did you have the idea that the money that you were giving there along with the others was to be used to pay attorneys on a contingent basis? A. Pay what?

Q.50. Pay attorneys on a contingent basis. A. I don't recall any mention of any contingent basis.

Q.51. Well, did you understand that the attorneys would be paid regardless of whether the compromise went through? A. I supposed they would, naturally. We never lose a case in our lives that we don't pay attorneys.

Q.52. That is right. Was there any idea in your mind as to the amount of money that would come back to you if the case was not compromised? A. No, nothing definite. I might have made a rough calculation myself, but—

Q.53. Did you understand that if the case was not compromised and you failed to get back some of your money, that anyone else would contribute and bear their proportionate part of that expense? A. That was the expectation.

Q.54. Was that said by him? A. I am quite certain he said that was his expectation and belief.

Q.55. What was? A. He didn't have time to see all of the companies, that he was going to see in New York and Hartford the companies he could get at quickly and get them to put him in funds for the time being.

Q.56. Did you get an idea that it was urgent that the money be raised immediately? A. Yes, I got an idea that he was rather in a hurry for it.

Q.57. Did he explain to you the necessity of the hurry or why it was so urgent? A. Simply the only reason he gave that he had to get new attorneys and in a way start fresh with this thing, and he thought the time was right and the time to act was then and there.

Q.58. Now, to whom did you make your check, if you recall? A. My recollection is that that check, I don't know whether I signed it or not, I think that check was drawn to Charles R. Street, Chairman.

(Photostatic copy of a check, handed to the reporter, was marked for identification as "Defendants' Exhibit 218, EFM.")

Q.59. You ordered the check drawn whether you signed it or not? A. Yes.

Q.60. I hand you Defendants' Exhibit 218 and ask you to state if that is the check. A. As far as I know, that is correct.

Q.61. You recognize the amount, $10,000.00? A. Yes.

Senator Hollingsworth: We offer that in evidence, Defendants' Exhibit 218.

(Which said Defendants' Exhibit 218, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

HOME OFFICE

HARTFORD FIRE INSURANCE COMPANY

INCORPORATED 1810

HARTFORD, CONN. MAY - 3 1935 193

HARTFORD-CONNECTICUT TRUST CO. (21-27) No. 193102

PAY TO THE ORDER OF R. P. STARK, CHAIRMAN $10,000.00

THE SUM ✱10000 00/100 DOLLARS

James L. Farmer

ASSISTANT SECRETARY

AUTHORIZED SIGNATURE

By order of R. J. Falvey Atty

Chas. H. Cutler Chairman

R. J. Falvey Atty

Hartford Conn.

CHICOPEE NATIONAL TRUST COMPANY

For Deposit

Pietro Falvey

PAY ALL OR ANY BANKER OR TRUST COMPANY

FEDERAL RESERVE BANK

1-9

218

Q.62. (By Senator Hollingsworth) I don't know that I got your answer in regard to what he said about the immediate need of the money. He said he had to get new attorneys? A. Yes.

Q.63. Anything else?

The Special Master: I can tell you what he testified. He said he was under the impression he was in rather a hurry for it.

Q.64. (By Senator Hollingsworth) You understood that the new attorneys were simply being employed to effect a compromise, didn't you? A. Yes, sir.

Q.65. Did he tell you that he had talked to any Missouri personages other than attorneys? A. I have forgotten whether he—it is a long litigation. I have forgotten whether he said he talked to the Insurance Commissioner of Missouri or not in addition to the attorneys, other than that he didn't say.

Q.66. Did he name any other persons? A. He named no other person, to my knowledge.

Q.67. Did he mention any influential people besides the attorneys? A. He certainly did not, not in my presence.

Q.68. Did anyone at that meeting ask him the names of the attorneys or the nature of the services that they were to perform or anything of that kind? A. I don't recall that they did. He said, "I think I can settle this case, but I want you to trust me."

Q.69. Did you get the idea that he was deliberately withholding information and was wanting you to leave it entirely in his hands without making inquiry? A. I got the impression that he wanted us to leave it entirely in his hands, but not that he was withholding information. I rather got the impression that he hadn't made up his mind exactly how he would go at it.

Q.70. Was there any recollection that you have as to what happened at this meeting? A. There was general conversation, the details of which I do not recall. My memory is quite uncertain as to whether any vote was taken. I don't think there was.

Q.71. Did you make any memorandum of the meeting afterwards? A. No, I made no memorandum.

Q.72. Did you instruct anyone in your office concerning the nature of this transaction? A. I told our cashier to draw a check for expenses in regard to this

Missouri litigation and to hold the suspense until we decided or until we knew exactly how much of it was to be used, when it would be charged to legal expenses.

Q.73. And you placed it in a suspense account? A. That is my recollection.

Q.74. Yes. I will show you a letter that will refresh your recollection about it. A. I would hate to have my cashier come up and contradict me. That is my impression.

(Photostatic copy of a letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 219, EFM.")

Q.75. I show you Defendants' Exhibit 219, which purports to be a photostatic copy of a letter signed by you in December of 1935 addressed to Mr. Dugan, General Agent, Chicago. A. Yes.

Senator Hollingsworth: I offer that in evidence.

(Which said Defendants' Exhibit 219, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

1935 CONNECTICUT'S TERCENTENARY 1935

The Hartford Fire Insurance Company
The Hartford Connecticut

December 27, 1935

AIR MAIL

A. O. Dugan, Esq., General Agent
Chicago, Illinois

My dear Mr. Dugan:

You will remember being present at a meeting here in Hartford addressed by Mr. Street where it was agreed that the committee in charge of litigation should receive some payment in advance to take care of attorney's fees and other incidental expenses. We accordingly advanced to Mr. Street $10,000. This sum has been carried in suspense; it is necessary to get it onto our books for the year. We suggest therefore that you send us a check at once so that it may reach us on or before December 31. We suggest the amount be charged to legal expense. If your remittance does not reach us by December 31 we shall debit you the amount on our books as of that date and return your check, in which event you can take up the charge in your December journal sheet.

Yours very truly,

D 219

A. That was merely to get that item into that transaction.

Q.76. (By Senator Hollingsworth) It had been carried as a suspense item and then you wrote this letter to Mr. Dugan on December 27, 1935, in regard to the matter? A. Yes, sir.

Q.77. That refreshes your recollection now? A. Yes.

Q.78. I notice your letter says, addressed to Mr. Dugan: "You will remember being present at a meeting here in Hartford addressed by Mr. Street where it was agreed that the committee in charge of litigation should receive some payment in advance to take care of attorney's fees and other incidental expenses." Now, what did you have in mind as "other incidental expenses"? A. Nothing very definite. I thought there might be court expenses or charges assessed against us in the course of the settlement, as distinct from the question of refund or failure to refund premiums.

Q.79. "We accordingly advanced to Mr. Street $10,000.00." Now, was that the first information you gave Mr. Dugan concerning this payment to Mr. Street, as far as you recall? A. Yes. I want to recall one statement I made. You asked me to name who were present at the meeting. I had quite forgotten Mr. Dugan happened to be in Hartford. He came on other matters, to my recollection, and attended this meeting.

Q.80. Ordinarily, wouldn't this $10,000.00 be charged immediately to the Western Department? A. Ordinarily, it would.

Q.81. That was where it was properly chargeable, wasn't it? A. That is where it would eventually be charged.

Q.82. But you carried it as a suspense item on your books here? A. Yes.

Q.83. From May of 1935 until the close of the year of 1935? A. Yes.

Q.84. Wasn't that an unusual thing? A. Not at all. It was a very common thing. We very frequently make advance payments for things in our separate departments. We have three large departments. We carry things in suspense until the end of the year, and close them up, or earlier if we can.

Q.85. And I notice, "We suggest the amount be charged to legal expense." A. Yes.

Q.86. Now, then, you advanced this money, afterwards, you learned, did you not, in a very short time, that a compromise had been effected? A. That was in '35.

Q.87. May of 1935? A. I don't know how soon I learned it.

Q.88. Well, to refresh your recollection, the compromise agreement was signed in May of 1935. A. The same month.

Q.89. May 18th, I believe, the same month. A. The same month.

Q.90. Now, do you recall that you learned shortly after that that the compromise was effected? A. I recall learning that the compromise was effected. Just how soon I learned it, I don't know.

Q.91. Then you were—you recall that a federal decree was entered in February of 1936. Do you recall that? Well, let me ask you further. A. I am not certain on that point as to whether I recall it or not. I remember there was some talk of a decree being entered. You see, our Western affairs are handled by our Western Department, and I didn't follow this thing very closely.

Q.92. Well, do you know why Mr. Street came here to Hartford to ask for the raising of this fund instead of going to the Western Department in the first instance? A. The suit, as I understand it, as I recall it, was originally authorized by the chief executives of the company, and it was a very important matter and I supposed because it had been authorized by the chief executives that when it came to a matter of settlement, he thought it would be wise and proper to consult those same men.

Q.93. Then do you recall that shortly after the federal decree an official communication came out in the nature of a circular from the Actuarial Committee setting out the terms of the compromise? Do you recall that? A. I do not recall that. I went away about that time, soon after that.

Q.94. Do you recall the apportionment of the money, the compromise, that 20 per cent went to the policyholders, 50 per cent outright to the companies, and 30 per cent was allocated for the payment of expenses? A. I have read that a number of times since in the press.

Q.95. You understood it?

The Special Master: Wait a minute. He didn't finish.

A. I have read that a number of times in the press since, but I don't recall learning it at that time.

Q.96. (By Senator Hollingsworth) Do you recall when you received an 11 per cent dividend from the 30 per cent fund? A. No.

Q.97. You have no recollection? A. I was not in this part of the country at that time.

Q.98. Who handled it, then? A. Our East secretary, virtually treasurer of the company.

Q.99. What is his name? A. Mr. Clyde P. Smith.

Q.100. You have no knowledge concerning the 11 per cent distribution? A. None whatever.

Q.101. Do you have any personal knowledge concerning the check for 5 per cent? A. No.

Q.102. Which was given back? A. Never heard of it until quite recently. If you will pardon me, a little word of explanation. I went to the Pacific Coast either the latter part of February or the first part of March of 1936, and was gone for two or three months. Then in the fall I was taken critically ill and was absent from the office for nearly a year. In fact, I am only working on part time now, just recuperating slowly from the illness, and there are a good many of these details that I never have known about. I never knew about the sending of the second check or the amount of it or the 11 per cent or the 5 per cent.

Q.103. What is your age, Mr. Bissell? A. It is an embarrassing question.

Q.104. I won't press it if you would rather I wouldn't. A. It is older than that of anybody within the sound of my voice, a good deal.

Senator Hollingsworth: I won't press it. I think that is all.

Cross Examination by Mr. Bullitt.

XQ.105. Mr. Bissell, did you learn from Mr. Street at that meeting on May 3, 1935, who was the attorney that you had that was *persona non grata* to the state's side of this rate litigation? A. My recollection is that he named Mr. Folonie.

XQ.106. Mr. Folonie. Did you understand from Mr. Street that when you and the other companies advanced this money for new attorneys' fees and incidental expenses that you would have to pay those new attorneys without regard to whether the compromise was effected or not? A. I certainly supposed we would have to pay them something.

XQ.107. And it was only the balance after paying those new attorneys and incidental expenses that you thought would be returned to you if the case was not settled, is that right? A. That is right.

XQ.108. I show you the $10,000.00 check that you authorized on May 3, 1935, and ask you to whose order was that check made? A. C. R. Street, Chairman.

XQ109. What did you understand he was chairman of when you authorized the making of it? A. He was the chairman of the committee conducting this litigation.

XQ.110. Looking at the endorsements on that check, tell us who ultimately got your money according to that check, as far as it shows.

Judge Henson: We object to that as a conclusion. The endorsement speaks for itself.

The Special Master: I am going to let him answer it, anyhow.

Mr. Bullitt: That saves the trouble.

A. I only know what is on the check.

XQ.111. (By Mr. Bullitt) I mean but you know all about banking practice, like I do. You know who got the money on it, don't you? A. It apparently is deposited to the credit of Hicks and Folonie.

XQ.112. Who were Hicks and Folonie? A. They were the firm who had had this case in hand.

XQ.113. They were your attorneys, weren't they? A. They were our attorneys.

XQ.114. So that $10,000.00 went to Hicks and Folonie? A. According to this check it did, certainly.

XQ.115. In your letter to Mr. Dugan of December 27, 1935, Defendants' Exhibit 219, where you state that the payment was made "to take care of attorneys' fees and other incidental expenses." Did you get that information from Mr. Street at the time you authorized the payment that was for attorneys' fees and incidental expenses? That is right, isn't it? A. That is right. That is what I inferred.

XQ.116. Now, Mr. Bissell, your company or group of companies, is one of the largest in the insurance field, isn't it? A. One of the largest.

XQ.117. You had something over $700,000.00 impounded premiums as of May 1, 1935? A. I couldn't testify to the amount. We must have had a considerable amount because we did a large business in Missouri.

The Special Master: While we are here, gentlemen, let me make a suggestion. It might be of importance to know which are the biggest companies, and it will take a long time to prove it this way. I would like to have that before me because when we talk about big companies and little companies—

Mr. Bullitt: We will prove that when we get to our case. I can't determine how these other gentlemen are going to prove their case.

The Special Master: Let me just suggest this—

Mr. Bullitt: Do you want me to prove it by Mr. Bissell?

The Special Master: No, I will suggest it, then you do anything you want to. In the testimony that has already been taken in this rate case, the total admitted assets and the total gross premiums in Missouri for the period in question are already in evidence. Can't it just be agreed that they shall be considered in evidence in this record and not worry these witnesses about which is the biggest?

Mr. Berger: I think it would probably be easier, Mr. Master, they are in Argus chart.

Mr. Bullitt: As of what time do you want? There certainly isn't the record of your rate case as of the transaction in 1935 and '36.

The Special Master: It isn't, it ends 1928.

Mr. Bullitt: There is a vast difference between the size of the companies in 1930 when the rates were put in effect and in 1935 and '36.

The Special Master: But their stake in Missouri was fixed by that.

Mr. Bullitt: Well, that may be.

Judge Henson: Let me suggest, gentlemen, I can't give you the number of the exhibits, but you will recall it is one of the exhibits when Mr. Haid testified in which the list of the impoundments is given.

Mr. Berger: We will give all of the impoundments in our case.

The Special Master: I do know, though, that the Hartford is one of the few largest insurance companies, both as to size and to the extent they were interested in Missouri.

Mr. Berger: There are—

Judge Henson: We introduced that exhibit in Mr. Haid's testimony, and I am sure it gives the correct amount of the impoundments.

The Special Master: I was not criticizing your question.

XQ.118. (By Mr. Bullitt) At the time that you had that conference on March 3, 1935, and at any time since until it all came out in the newspapers this spring, did you know or have any reason to believe that Mr. Street was paying any money, your money or anybody's money to any public official or to any other person to get this compromise through? A. I had no knowledge that he was to pay or did pay any money except to the attorneys or to the state as agreed upon in the settlement.

XQ.119. And did you know or anybody in your company, as far as you know, authorize or have any intimation that Mr. Street was expecting to use or did use any money of any kind except to pay legitimate attorneys' fees and legal expenses? A. I did not. I was astounded when I read it in the newspapers.

XQ.120. Did you ever authorize or anybody in your company ever authorize Mr. Street to bribe anybody or to pay any public official to get this compromise agreed to? A. Certainly did not.

XQ.121. At the time that you had this conference on May 3, 1935, did Mr. Street say anything to you and the others assembled that he would furnish an accounting later, and if so, tell just what he said about that. A. He said that he did not know how much it would cost to get through with this matter, but when the thing was finished up, when the deck was all cleared, that each company would receive a complete accounting of the uses to which this money had been put.

The Special Master: This is your own lawyer asking these questions. He is not asking them to raise an implication against you, but he is not willing that you go away from here without having specifically denied it.

XQ.122. (By Mr. Bullitt) Did Mr. Street at that same time say to you and the other gentlemen that he didn't know how much it was going to cost for attorneys' fees and other legal expenses, that it might be more or less than the amount he was then asking for? A. He said substantially that, although the inference in my mind was that it would be more.

XQ.123. It would be more than the amount he was then raising from you and the New York companies? A. Yes.

XQ.124. So that when you advanced your proportion of $10,000.00 of that first advancement, you expected you would have to put up some more money for the very reasons that he then assigned for wanting to get this fund raised, is that right? A. That is correct.

Mr. Bullitt: That is all.

Re-Direct Examination by Senator Hollingsworth.

RDQ.125. Mr. Bissell, the evidence in the New York hearing is that a meeting of some gentlemen was held in the spring of 1936 in New York where the matter of the 5 per cent assessment was discussed. Was there such a meeting here in Hartford? A. Not to my knowledge.

RDQ.126. You have no knowledge of it? A. I have no knowledge of any such meeting.

RDQ.127. Have you ever heard of such a meeting? A. I never heard anything about the 5 per cent until within the last two weeks.

RDQ.128. I believe you stated that you were away? A. I was away for a number of months.

RDQ.129. Now, Mr. Smith would have charge of your company in your absence? A. No, he wouldn't have been in charge of the company. He is in charge—while his title is secretary, he performs the functions of a treasurer. He is not an underwriter.

RDQ.130. Would he be the man in your office who would have whatever knowledge the company has concerning any such a transaction? A. Yes, he is the man.

RDQ.131. And all other transactions in connection with this matter during your absence? A. Yes. There is possibility that one of our vice-presidents—I, personally, have not supervised the Western Department for a number of years, one of our vice-presidents, Mr. F. C. White, has done so. He is away on his vacation at this time. It is barely possible that he may have known something of this, but I don't think so. I think Mr. Smith was the only one.

RDQ.132. What was it that Mr. Street said to you that gave you the impression that you might be called on for more money? A. He said he was going to call is my recollection, at my time of life it might not be accurate, perhaps. He said he was going to call on us for a round sum which he hoped would be sufficient to handle the matter, but there might be easily considerable additional expense and if there was he would come back to us for more later.

RDQ.133. And until the compromise was effected, did you understand that you larger companies or your people who attended the meeting there were to finance the litigation? Did you understand that? A. Well, we were to help to finance it. It was my firm belief, I don't know, that Mr. Street said so in so many words, it was my firm belief that the companies in New York and possibly Philadelphia, the outstanding companies, were also helping to create this advance fund for this purpose.

RDQ.134. Did you consider, was it treated as a confidential meeting? A. Well, there were no reporters there, as I recall.

RDQ.135. But to be kept in confidence between you men who were putting up the money as distinguished from the general insurance world? A. No, I would have had no hesitation in disclosing the fact to an executive of another company not represented.

RDQ.136. That is what I want to get at. Did you make any disclosure at any time to any person other than what you told Mr. Smith and Mr. Dugan in this letter? A. I don't think I can answer that question. The matter has been so much discussed. The whole matter of this Missouri litigation has been so much discussed over a period of years that whether it ever was the subject of general conversation at which I was present after this meeting, I don't know. I don't recall.

RDQ.137. Did you report it to your board of directors or any executive committee of your company? A. No.

Judge Henson: That is all.

Re-Cross Examination by Mr. Bullitt.

RXQ.138. Was there anything secret as between your company and the various companies represented at that meeting and the remaining 137 companies that were involved with you in the litigation? A. Not to my knowledge. Oh, no, certainly not.

RXQ.139. Didn't Mr. Street tell you at that time that while he was calling on a few of the larger companies to put up this advance payment, it would be prorated with all of the other companies and an accounting made so that everybody would be bearing the same prorata share of whatever had to be put up? A. That is true.

RXQ.140. So there was nothing private or secret or confidential as between you and the other companies,

was there? A. No. Oh, no, there was no intention to bar the other companies from knowledge.

Mr. Bullitt: That is all.

(Witness excused.)

The Special Master: We will adjourn until one-thirty.

Whereupon, the further taking of testimony in said case was adjourned until one-thirty o'clock p. m. of said Monday, August 7, 1939.

AFTERNOON SESSION, MONDAY, AUGUST 7, 1939.

Pursuant to adjournment as aforesaid, at one-thirty o'clock p. m. of said Monday, August 7, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

(Photostatic copies of checks and letters, handed to the reporter, were marked for identification as "Defendants' Exhibits 220, 221, 222, 223, 224 and 224a, EFM," respectively.)

Mr. Berger: Mr. Claussen of the London & Lancashire was asked that he forward to us copies of the letter covering the advice that he gave to the home office, and I am handing herewith Mr. Claussen's letter enclosing that letter with the exhibits and the reponse back from his home office in London.

Senator Hollingsworth: We ask that the reporter mark this as Defendants' Exhibit 225.

(Said letter, handed to the reporter, was marked for identification as "Defendants' Exhibits 225, 225a, 225b, and 225c, EFM," respectively.)

Senator Hollingsworth: We ask that this be made a part of the testimony of Mr. Claussen given in Chicago.

(Which said Defendants' Exhibits 225, 225a, 225b and 225c, so offered in evidence, having been previously duly marked, are attached to the testimony of Carsten Claussen given at Chicago on July 29, 1939, appearing at pages 330 to 333, inclusive.)

J. H. VREELAND, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. Mr. Vreeland, what is your connection with the Scottish Union & National Insurance Company group?

A. I am the United States manager of the Scottish Union and the president of the American Union.

Q.2. The Scottish Union is a Scottish company? A. Yes.

Q.3. Organized in Scotland? A. Yes.

Q.4. With home office in Scotland? A. Home office in Scotland, and this is the United States branch here.

Q.5. And the American Union, that is in your group? A. Is an American subsidiary of the Scottish Union.

Q.6. What is its home office? A. New York corporation.

Q.7. Now, then, you are United States manager of the Scottish company and president of the American? A. Correct.

Q.8. How long has that been your situation? A. Since 1920, and the American Union wasn't organized then, but I organized it and have been president ever since.

Q.9. Was it organized prior to 1935? A. Yes.

Q.10. So, of course, in 1935 you had the same position that you have now? A. Right.

Q.11. Mr. Vreeland, you are aware of the fact, I guess, there was a litigation in Missouri involving the sixteen and two-thirds percent rate case? A. Yes.

Q.12. Who was handling that litigation for your companies? A. Well, it was a committee of which Mr. Street was the chairman.

Q.13. Was it the Subscribers' Actuarial Committee? A. Yes.

Q.14. Their headquarters are where? A. Chicago.

Q.15. And these suits are pending in the federal court in Missouri? A. Yes.

Q.16. Mr. Vreeland, you live in Hartford? A. Yes.

Q.17. Your office is in Hartford? A. Yes.

Q.18. I will get you to state whether or not you attended a meeting here in Hartford in the Aetna Fire board room of the Aetna Fire Insurance Company on or about May 3, 1935. A. I did.

Q.19. Do you recall the names of others who were present? A. Well, a few of them.

Q.20. I wish you would name some of them and their connections. A. Mr. Bissell, president of the Hartford Fire, Mr. Clark, manager of the Caledonian, Mr. Milligan, president of the Phoenix, and Mr. Long, the vice-president then of the Phoenix, Mr. Kingan, manager of the London & Lancashire.

Q.21. Was Mr. Stinson present, Alfred Stinson? A. I think he was, but I am not certain.

Q.22. Was Mr. Safford present, do you recall? A. I think he was, but I am not sure. I know their companies were represented, but whether these individual men were there, I am not sure.

Q.23. Do you recall whether Mr. Layton of the National was present? A. I think Mr. Layton was there.

Q.24. I suppose, of course, Mr. McCain of the Aetna was there? A. I don't remember Mr. McCain.

Q.25. Was Mr. Charles R. Street there? A. Yes.

Q.26. Where does he live? A. Chicago.

Q.27. What is his connection with all of this matter? A. He was chairman of the Actuarial Committee.

Q.28. Now, on the occasion that he came to this conference did you have any advance notice that he was coming? A. I had a notice that there was to be a meeting to hear Mr. Street on the Missouri impounded premium matter.

Q.29. Who gave you that notice? A. Well, I think it was telephoned to me.

Q.30. Do you remember who telephoned you? A. No, I do not.

Q.31. Anyway, though, you attended the meeting? A. I did.

Q.32. Who did most of the talking at that meeting? A. Mr. Street.

Q.33. What did Mr. Street say? I wish you would give the meeting now, just as nearly as you can reconstruct it. A. Well, he gave a history of the case, referred to this long, tiresome litigation, and said that he thought that it should be compromised if it could be compromised, and that he believed that there was a possibility of arriving at a compromise on the basis of 10 per cent to be distributed to the policyholders, and 90 per cent to be returned to the companies, and he said that he needed some funds and would like to have the companies present contribute in round sums, round figures, towards a sum of money.

Q.34. Did he have his figures already prepared, apparently, on a sheet of paper? A. I don't think he did have.

Q.35. How did he indicate the sums that were desired? A. Well, he said that he was going to try and prorate it, the amount which he needed, among the companies which were present at the meeting and he called off several amounts and, of course, I remember my own, $4,000.00. I don't remember of any other amount, but it

appeared to me that the amount arrived at was calculated according to the amount of business done by the various companies or the size of the companies.

Q.36. These companies all had money impounded in that rate litigation, as I understand it? A. Yes.

Q.37. Now, go right ahead and tell us anything further that you can recall that Mr. Street said? A. Well, that is the substance of what he said.

Q.38. Did he advise you that he had attended a meeting in New York the previous day? A. Yes.

Q.39. What did he say about the New York meeting? A. He said that the companies there had agreed to the advisability of a compromise if one could be brought about.

Q.40. Did he tell you anything else about the New York meeting? A. I understood him to say that he had collected a certain amount of money from the New York companies.

Q.41. Do you recall how much that was? A. No, I don't.

Q.42. How much did he want out of the Hartford companies? A. I should say my recollection of it is that it was around $35,000.00 to $40,000.00.

Q.43. How much did he want, all told, from the New York or other groups and your own? A. Well, now, I am not certain whether this is what I heard at the meeting or I have heard so much about it since, that is the $100,000.00 total.

Q.44. What did he state at that meeting that this money was for? A. Legal expenses.

Q.45. For what? A. In connection with the lawsuit.

Q.46. Did you understand that was to pay your own lawyers? A. I didn't know about that.

Q.47. Did you ask him what lawyers it was to pay? A. No.

Q.48. You would have understood legal expenses to at least indicate—to at least include the lawyers, wouldn't you? A. Well, it might include lawyers, I don't know about that.

Q.49. Now, what lawyers did he say this money was for, if he did say? A. He didn't say what lawyers.

Q.50. Did anybody ask him? A. No.

Q.51. Did he discuss there the chances they had of winning the suit so that no compromise was necessary or was that discussed? A. I don't think so.

Q.52. Did anybody else throw that into the discussion? A. I don't remember that it was brought in.

Q.53. State whether or not he needed this money immediately, if he indicated that he needed it immediately. A. Well, he intimated that he needed it in the near future, yes.

Q.54. Was anything said about why the particular group that was assembled was the only one consulted, if that was true? A. Yes, one asked about the other companies, we will say the smaller companies, asked what about them.

Q.55. Why they were not consulted? A. No.

Q.56. Did Mr. Street say that he had consulted all of the smaller companies or anybody else? A. No.

Q.57. I don't want to misunderstand you, if I understand you, you are not very certain that—yes, you testified that you were. Now, state what the arrangement was with you men that put up this money for your companies with reference to its return or accounting for it. Just state just exactly what Mr. Street said about it so far as you can tell. A. Well, he said that he was asking the companies whom he met in New York and in Hartford to contribute toward this fund, toward a fund and my impression that I got was that the general funds were somewhat depleted, and he said that instead of going to all of the companies he was asking those that he could reach at this trip, and that whatever money we contributed would be accounted for in the final accounting.

Q.58. State whether or not he stated that this money was to be used to compromise the case. A. I don't know that. I couldn't say that.

Q.59. What connection did you understand the money had to do with the compromise of the lawsuit? A. I don't know that it had any.

Q.60. You are not impressed that it did have any? A. No.

Q.61. Was any explanation made there why you would discuss the question of compromising Missouri rate case and then at the same time he would be raising some money for legal expenses? Well, anyway, you don't think they had any connection, if I understand you. A. No, I don't think it was. It was for legal expenses.

Q.62. Do you know who your lawyer was in the litigation down there in Missouri? A. Yes.

Q.63. Who was it? A. Mr. Folonie.

Q.64. Did Mr. Street say anything about Mr. Folonie at the meeting, and if so, what? A. Well, I think that he said that Mr. Folonie—let me put that differently—that he might employ additional attorneys, and I got the impression from what he said that Mr. Folonie had been fighting this case for years and years, and he thought that it would be advisable to employ additional attorneys.

Q.65. Do you mean that he left the idea that you would get along better to bring a new lawyer into the case than it would to take one that you already had? A. That is the impression that I got, that he might bring new lawyers in.

Q.66. Pardon me? A. Bring new lawyers into the case.

Q.67. Now, what were the new lawyers to come into the case for, to compromise it or fight it? A. Well, I don't know. He didn't say.

Q.68. You didn't ask? A. No.

Q.69. Did anybody else ask? A. No, not to my knowledge.

Q.70. What amount of money did you agree to put up or did you put up for your companies? A. $4,000.00.

Q.71. State whether or not you agreed on that amount before you left the meeting. A. Mr. Street said the Scottish Union, and pointed to me, $4,000.00.

Q.72. Yes? A. That is all there was to it.

Q.73. I believe you said he didn't have that on any list? A. Not that I know. He seemed to read them off in thousands of dollars.

Q.74. Did he read off for the other fellows, too? A. I won't say whether he read them off or had it in his head or not.

Q.75. Did he state what the other fellows were expected to do? A. What amount they were expected to pay?

Q.76. Yes. A. Yes.

Q.77. Right there in the meeting? A. Yes.

Q.78. So anybody that could hear could hear what they were doing? A. I can remember having heard him say the amount which he thought would be the right proportion for some other companies.

Q.79. Well, did you agree that that was the right proportion for your company for the amount it had involved? A. Well, I didn't question it.

Q.80. Did anybody else question his allotment or figures there? A. No.

Q.81. Well, were the checks written there in the meeting? A. No.

Q.82. When were they written, if you know, at least of your own? A. I know when my own was written.

Q.83. Whom did Mr. Street say to make these checks payable to? A. He said that we could make them payable to either himself or to Mr. Folonie.

Q.84. I believe that in your case you did make your check payable to Mr. Folonie? A. Yes.

Q.85. Why did you do that? A. Why, for no reason other than being attorneys' fees or legal fees.

Q.86. Had you expected Mr. Folonie to take that money and go out and hire a lawyer to displace him? A. I didn't know. I didn't give it any thought.

Q.87. Did you expect Mr. Folonie to turn it to Mr. Street? A. I never gave that any thought.

Q.88. Now, I show you what has been marked as Exhibit 220, and will ask you whether or not that is a photostatic copy of the check and its endorsements, I mean the $4,000.00 check about which you have been testifying. A. It is.

Judge Henson: I now introduce that in evidence.

(Which said Defendants' Exhibit 220, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

ESTABLISHED IN 1824

SCOTTISH UNION & NATIONAL INSURANCE CO.

Hartford, Conn. MAY 3 1935 No. 54076

Pay to the order of T. J. Fahey Attorney $400.00

EXACTLY $400.00

TO THE FIRST NATIONAL BANK

51-56 HARTFORD, CONN.

MANAGER

CASHIER

EXHIBIT 50

HARRIS TRUST AND SAVINGS BANK

PAY TO THE ORDER OF

CHICAGO

HUCKS & HOUGHTON

2900

Pay to the order of
Merle Ottaway
Merle Ottaway Attorney
for Defendant

Q.89. I show you Defendants' Exhibit 221, and will get you to state what that is. A. That is the receipt for the $4,000.00.

Q.90. Who signs the receipt for the $4,000.00? A. C. R. Street, Chairman.

Q.91. I believe you say the check itself was made to R. J. Folonie, attorney? A. Yes.

Q.92. How do you account for Mr. Street receipting your companies for the $4,000.00 when you paid it to Mr. Folonie? A. Well, I never gave it a thought, and probably never saw the receipt until I took it out in Kansas City.

Q.93. When would you say you got that receipt? Would that have come back rather shortly after the delivery of the check? A. Well, I don't know.

Q.94. The receipt seems to be dated May 3, 1935. A. Yes.

Q.95. And the check seems to be dated that date. A. May 3, 1935.

Q.96. Now, if that refreshes your memory, state whether or not the check was written at the meeting. A. No, it was not.

Q.97. How do you account for the getting of the receipt and delivery of the check at the same day? A. Well, I would say that the cashier, when he drew the check, also drew the receipt.

Q.98. Yes. Well, when did you get the receipt back? A. I am just—I can't tell you that.

Q.99. I am just trying to reconstruct it the best I can. A. No.

Q.100. You don't know when you got this receipt, Exhibit 221? A. No.

Judge Henson: I offer 221 in evidence.

(Which said Defendants' Exhibit 221, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

54076 5/3

MAY 3 1935 19

Received of Scottish Union & National Insurance Co.

EXACTLY $4000.00 CTS. Dollars

In payment of (Remitted to Atty P & Talmie)

$4000.00

Chairman

$4000.00

EXH. 51

Q.101. (By Judge Henson) Now, I show you Defendants' Exhibit 222. A. Yes.

Q.102. State what that check is. A. It is a check to the order of C. R. Street, Agent, for $1,257.42.

Q.103. That is the check of the American, your allied company, I believe? A. Yes.

Q.104. And that is March, 1936? A. Yes.

Q.105. That is the endorsement on that? A. Yes.

Judge Henson: I now introduce, or offer in evidence, Exhibit 222.

(Which said Defendants' Exhibit 222, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

AMERICAN UNION INSURANCE CO.
OF NEW YORK

No. 17879

HARTFORD CONN MAR [illegible] 1935 193

PAY TO THE ORDER OF C. R. Hine & Co. $1,257.42

EXACTLY $1257 42 CTS

TO
THE FIRST NATIONAL BANK
51-56 HARTFORD, CONN.

PRESIDENT
SECRETARY
CASHIER
AUDITOR

C. R. Hine & Co. Agent

FEDERAL RESERVE BANK
5-1

EXHIBIT

Q.106. (By Judge Henson) Now, I will show you Exhibit 223. A. Yes.

Q.107. You may state what that is. A. That is the Scottish Union check to the order of C. R. Street, Agent, for $414.50.

Judge Henson: I now offer that in evidence.

(Which said Defendants' Exhibit 223, so offered in evidence, having been previously duly sworn, is in words and figures as follows:)

ESTABLISHED IN 1824

SCOTTISH UNION & NATIONAL INSURANCE CO.

Hartford, Conn. MAR 1938 No. 57183

Pay to the order of C. P. Spencer & Co. $414.50

EXACTLY $414 & 50 CTS.

ASSISTANT SECRETARY AUDITOR

To THE FIRST NATIONAL BANK

51-56 HARTFORD, CONN.

MANAGER ASSISTANT SECRETARY

ASSISTANT MANAGER COMPTROLLER OR AUDITOR

EARLE

FEDERAL RESERVE BANK

5-1

ANY BANK, BANKER OR TRUST COMPANY TO WHOM THIS CHECK IS PRESENTED FOR PAYMENT MAY PAY IT WITHOUT INDORSEMENT

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Q.108. (By Judge Henson) Now, that is the March, 1936, check? A. March 27, 1936.

Q.109. State whether or not this check, 223, and this check, 222, the amounts of those added with the $4,000.00 check, Exhibit 220, state what percentage of your impoundments that is supposed to include. A. That is 5 per cent of our impounded premiums.

Q.110. Was that 5 per cent discussed at the meeting which you have described here in Hartford in 1935? A. No.

Q.111. When did that 5 per cent idea get into the picture, if you know? A. I don't know when it got into the picture, but I know the first I ever heard of it was just when those two last checks were drawn, within a day or two of that time.

Q.112. How did those two last checks, 222 and 223, happen to be drawn? A. When a return to the companies of the 11 per cent of the impounded premiums was sent us, there was also an assessment of 5 per cent.

Q.113. That was in March, 1936? A. Yes.

Q.114. Did you get any letter in regard to that 5 per cent from anybody? A. No.

Q.115. Is there anything in this file that you know anything about in writing that deals with the 5 per cent? A. Yes.

Q.116. What is it? A. There was a memorandum there that shows those figures and what 5 per cent is.

Q.117. I will get you to show us that. A. I haven't seen these (indicating).

Q.118. Take your time. I am not badgering you I just wanted to get the facts. A. I haven't found it. It wouldn't be the first mistake I ever made if I should have overlooked it.

Judge Henson: Mr. Berger, if you are aware of it and can come up and assist the witness, I have no objection.

Mr. Berger: I don't believe there is.

Judge Henson: I didn't find it.

Mr. Murphy: There is the pencil memorandum of Mr. Haid's, but I don't think it is—

A. I didn't find it. I had a lead pencil or small memorandum what 11 per cent was and 5 per cent was.

Q.119. (By Judge Henson) Well, these exhibits, originals in your own files, were prepared for the Federal Grand Jury this year at Kansas City? A. Yes.

Q.120. And I assume that is there is no pencil memorandum in here, you probably didn't find any such? A. No.

Q.121. When you were preparing this for the Federal Grand Jury. A. Well, if I had it then, Mr. Milligan would have it.

Q.122. You knew what the Missouri rate settlement was shortly after the settlement was made, I guess? A. Yes.

Q.123. About when did you hear about the Missouri rate controversy being settled? A. Well, it would be difficult for me to fix that date.

Q.124. Well, assuming that the settlement contract was signed May 18, 1935. A. Yes.

Q.125. About how soon after that was it that you had the first information that the controversy had been settled? A. I probably saw it in the newspapers shortly after that.

Q.126. What is your first impression of how this settlement was, that is, the divisions in figures, whatever the settlement was was in the newspapers or in your trade journals, wasn't it? A. Yes.

Q.127. What was that division? A. It was 20 per cent to the policyholders, 30 per cent to the trustees and 50 per cent returned to the companies.

Q.128. Now, what was the 30 per cent to the trustees for? A. Well, it was to pay—my understanding of it is that it was to pay certain accounts that the trustees were required to pay.

Q.129. Well, the things they were required to pay was the lawyers' fees on both sides, your own lawyers and the state? A. I don't know.

Q.130. You never heard that? A. Well, I would think that that would be a natural thing to come out of that fund, yes.

Q.131. Now, if the Subscribers' Actuarial Committee sent you a report on this settlement or if the rating bureau there in Missouri sent you one, you don't recall having seen it? A. Yes.

Q.132. If that was sent in the summer of 1935? A. There was something of that kind that came in.

Mr. Murphy: That was in February, 1936.

Q.133. Did you have notice of the fact that February 1, 1936, the federal court at Kansas City made an order of distribution of the impounded funds? You heard

that at sometime, I am sure. I am asking you now if you did. A. State that again, will you please?

Q.134. I will just restate the question. State whether or not you heard about the decree of the federal court of February 1, 1936, in which it undertook to distribute the funds 50, 30 and 20. A. Yes.

Q.135. Now, when, with reference to that date, February 1, 1936, would you say that you had that information? A. I couldn't say.

Q.136. Well, have you any impression on whether it was shortly afterwards or not? A. As to whether —as to when I had the information as to what decided it?

Q.137. Yes. A. I couldn't tell you about that.

Q.138. Well, I will ask you whether or not it is a fact that Street and Folonie sent their check, either of them sent the check of the two as trustees for the equivalent of 11 per cent of your impounded premium up to May 1, 1935. You got that 11 per cent check, didn't you? A. Yes.

Q.139. And you knew whom it was from? A. Yes.

Q.140. At that time? A. Yes.

Q.141. You certainly understood it when you received the check? A. Yes.

Q.142. And you kept the check? A. What check?

Q.143. The 11 per cent. A. Oh, yes, correct.

Q.144. Now, then, you also received a check for 50 per cent of your impoundments, that was from Mr. Kemper, the custodian, didn't you, and you knew what that was?

The Special Master: You don't let him answer the questions.

Mr. Berger: Those were bonds, not checks.

Judge Henson: Well, all right.

A. We received them periodically, piecemeal.

Q.145. (By Judge Henson) Now, Mr. Vreeland, state whether or not there was a request for 5 per cent check from your companies at the same time you received this 11 per cent check. A. There was.

Q.146. How was that request communicated to you? A. It was on a memorandum, together with the check. That is my recollection now, and it showed the 11 per cent and the 5 per cent assessment.

Q.147. Now, the 11 per cent was from the trustees, Street and Folonie, that is true, isn't it? A. Yes.

Q.148. State whether or not you understood the 11 per cent to be paid to you by these trustees out of the 30 per cent. A. I don't know.

Q.149. Whoever made this request of you, how did they want that 5 per cent made? A. Made payable to C. R. Street, Agent.

Q.150. You recall that very definitely, don't you? A. Yes.

Q.151. I will get you to look through this file now and see if you have a pencil memorandum making a request for the 5 per cent check. A. Well, I looked through.

Mr. Berger: It is not there.

Q.152. (By Judge Henson) Then you have in mind the same memorandum I was asking you about a while ago? A. Yes.

Q.153. It is not in there. I am glad to be set right. I thought you were talking about another one. Now, Mr. Vreeland, can't you recall whom that memorandum was from, whether Mr. Street, Mr. Haid, or Mr. Long or who it was? A. Why my recollection is that it came from Mr. Haid's office.

Q.154. Mr. Paul L. Haid of New York? A. Yes.

Q.155. When you wrote the 5 per cent check of your two companies, whom did you send those two checks to? A. I couldn't say.

Q.156. You don't recall what you did with the checks? A. I don't know whom I sent it to.

Q.157. You, at least, don't appear to have written any letter transmitting them, did you? A. Well, I haven't any letter.

Q.158. There is none there, at least? A. No.

Q.159. You don't remember whether you sent those checks to Street or Folonie or Paul Haid or whom you sent them to? A. I don't remember.

Q.160. So far as you know was there anyone in Hartford here who undertook to gather up these 5 per cent checks? A. I don't think so.

Q.161. Well, I haven't heard of any yet. That was the way it was done in New York. Was the information given you at the time the 5 per cent check was called for that you could have a credit for the previous payment of $4,000.00? A. Yes, sir.

Q.162. That is true? A. Yes.

Q.163. That was made clear? A. Yes.

Q.164. Have you given all that you can remember now about the payment of the 5 per cent check? A. I think so.

Q.165. Of course, there was no letter of transmittal of the $4,000.00 check? A. No.

Q.166. I am not sure that I got your answer. Did you give that check to Mr. Street yourself? A. No.

Q.167. Or what did you do with it? How did you transmit it? A. My recollection of it is that I sent it over to one of the other companies that were sending their check.

Q.168. Do you remember who that was? A. Yes, I think it was the Phoenix.

Q.169. You knew the Phoenix was sending a check, so you just sent your check over there to go with theirs? A. Yes.

Q.170. Why did you do that? A. Well—

Q.171. Your company was not hard up for postage, was it? A. No, not at all.

Q.172. How did it happen that you didn't send your check by letter? A. Well, I don't know whether I spoke to Mr. Long or Mr. Milligan or what. I don't know.

Q.173. Isn't it your impression that someone did gather up these 5 per cent checks, someone around Hartford here? A. The 5 per cent checks?

Q.174. Yes, that is what I am talking about. A. No, I don't know.

Q.175. Going back a moment to the $4,000.00 check, was there somebody gathering them up? A. No.

Q.176. Now, you have explained to us all that you can recall about all of these checks, have you? A. Yes.

Q.177. When you got that check from Street and Folonie, as trustees, for 11 per cent, you were asked to contribute back a check, the equivalent of what you had already paid of 5 per cent to C. R. Street? A. Yes.

Q.178. Was it explained to you what that was for? A. No.

Q.179. What did you understand it was for, if you had any understanding about it? A. Well, I presume that it was a 5 per cent assessment.

Q.180. What for? A. For legal expenses.

Q.181. Where did you get the idea it was legal expenses? A. That is what Mr. Street talked about at the meeting.

Q.182. Back there a year before that? A. Yes.

Q.183. Nearly a year? A. Yes.

Q.184. Did he tell you there at this Hartford meeting that you would be assessed more money than what was being raised there at the meeting or likely would be? A. I am not quite clear about that. I heard Mr.

Bissell say that he thought that he did, but I am not quite clear about it, but my impression is when I think about it, that he did intimate there might be more money needed.

Q.185. Then when you paid the $4,000.00 check you didn't know whether you were through or not? A. No.

Q.186. But if you weren't through, you were ready to kick in some more, were you? A. Yes, if it—

Q.187. (Interrupting) Yes. On whose word were you willing to do that? A. On the word of the committee and our attorneys.

Q.188. And Mr. Street? A. Yes.

Q.189. The truth is that Mr. Street could have called on you for more money than that and you would have readily paid it, wouldn't you, on his assurance of what it was for? A. Yes.

Q.190. I thought so. I see you made the checks payable to C. R. Street, Agent? A. Yes.

Q.191. Whose agent? A. I don't know. It certainly wasn't our agent. He never had any authority to represent us as agent.

Q.192. He never had any authority? A. Not as agent, no.

The Special Master: Just a minute. I think I can straighten that up. You commonly refer to the people that write your policies as agents?

A. Yes, the commission of authority as agent.

The Special Master: You don't mean by that he had no authority to look after this lawsuit, but you mean—you don't mean that?

A. I mean that he had no authority to represent us as an agent.

Judge Henson: A selling agent is what he means.

A. Yes, a selling agent.

The Special Master: Now, the reason I am saying that, in the law we don't use the term that way. You are talking to a lawyer, and he is talking to an insurance man, and I think I understood you both.

Judge Henson: I don't doubt it.

The Special Master: The people who write your policies, you refer to as agents.

A. Yes, sir.

The Special Master: You don't refer to a man who is attending to a lawsuit as an agent?

A. No.

Mr. Bullitt: He is an attorney.

Q.193. (By Judge Henson) Then, Mr. Vreeland, anyway, you were willing to write these two checks, and did write the two checks there to C. R. Street, Agent? A. Yes.

Q.194. For him to go ahead and use that in this lawsuit as he pleased?

Mr. Bullitt: Now he didn't say that.

Judge Henson: Let him answer it, whether he did or not.

Mr. Bullitt: You ask him the facts.

A. I signed whatever checks were drawn to Mr. Street. They were so drawn because the request was to have the checks drawn that way, and if I ever gave it any thought at all, as to the name of the attorney in there, I presumed that it was some banking arrangement started years ago, but I don't believe I gave it but very little thought, if any.

Q.195. As a matter of fact, you knew Mr. Street couldn't take this as trustee and put it over into the fund he had just paid the 11 per cent out of. When you say it was some kind of a banking arrangement, that is what you have in mind, isn't it, to keep the account separate? A. I say that if, at the time I drew that check I noticed it at all, the term "agent" and didn't question it, I would probably have it in mind that the banking account for the trustees was as agents or something of that kind. I gave no significance whatever to the term "agent."

Q.196. Now, did your company have some question up with the internal revenue department at Washington regarding your income taxes for the year 1935? A. Yes, there was an examiner from the Internal Revenue Department that was over there.

Q.197. I will ask you if it isn't a fact that you took credit for the $4,000.00 your company took credit for the $4,000.00 in its income tax return and that the department disallowed it. A. Yes.

Q.198. I will just refresh your memory. I will show you Exhibit 224 and 224a and ask you whether you received those documents, the originals, of which those are photostats, from the department. I think this one (indicating) relates to the legal expense here. A. Yes.

Q.199. In other words, in your income tax—

The Special Master: Did you offer that in evidence?

Judge Henson: I will now offer Exhibits 224 and 224a.

(Which said Defendants' Exhibits 224 and 224a, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

OFFICE OF
INTERNAL REVENUE AGENT IN CHARGE
NEW HAVEN DIVISION

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
NEW HAVEN, CONN.

Year	Deficiency
1935	$5,265.42
Net result....	$5,265.42

Scottish Union & National Insurance Co.,
75 Alm Street,
Hartford, Conn.

Sirs:

There is inclosed copy of report supplementing that furnished you covering the investigation of your income tax liability for the year 1935.

There is also inclosed form of agreement for your signature, if the report now meets with your approval. Report will be held until Sept. 30, 1937, pending receipt of advice from you.

Kindly acknowledge receipt of this report.

Respectfully,

Incls.
Agreement Form 870.
Copy of report.
Acknowledgment Form.

THOMAS E. DOYLE,
Internal Revenue Agent in Charge.

ff.

Scottish Union & National
Insurance Co.
Hartford, Connecticut.

Supplemental
Year 1938.

Summary

Year	Deficiency
1938	$5,265.42

Additional tax shown above is due to adjustments detailed herein. Changes were discussed with Mr. Horn, in charge of tax matters.

Taxpayer does not agree to disallowance of expenses through I.E.A. Advance Commissions and Interest on Bonds Historic Gold which are being protested for 1934 and decision will also apply to 1938. Other items are not disputed but taxpayer wishes to have report reviewed by Mr. Hotchkiss, Attorney.

Information Report dated July 21, 1937 on Missouri Impounded Premiums held that income from such was taxable in 1936 with no allowance for expenses paid by Insurance Executives Association. Adjustment is so made herein.

SCHEDULE NO. 1

ADJUSTMENTS TO NET INCOME

Net income as disclosed by original report		$ 968,730.29
As corrected		973,661.42
Net adjustment as computed below		$ 4,931.13
Unallowable deductions and additional income:		
(a) Legal expenses	$4,000.00	
(b) Excessive M.C. Expense	84.75	
(c) Excessive M.C. Tax	30.00	
Total		4,114.75
Nontaxable income and additional deductions:		
(d) Missouri Impounded Premiums	$15,182.63	
Total		15,182.63
Net adjustment as above		$ 5,067.88

SCHEDULE NO. 1-A

EXPLANATION OF ITEMS

(a) Legal expense assessed by Insurance Executives Association is disallowed for failure to substantiate the nature and reason for such expenditures....$4,000.

Q.200. Now, as a matter of fact, you took credit in your return to the government for $4,000.00 legal expenses, as I understand, for that year? A. Yes.

Q.201. That means that was for this $4,000.00 you just talked about that you paid out? A. Yes.

Q.202. And the files here indicate it was disallowed? A. Yes.

Q.203. Not to refresh your memory, if you haven't, I will show you the latter part of that Exhibit 224a to see if it was and ask you if it wasn't disallowed because you gave no explanation.

The Special Master: It says so.

Mr. Berger: It speaks for itself.

Judge Henson: I think so. I want the opportunity to examine this witness.

Mr. Bullitt: Don't ask him—

Judge Henson: (Interrupting) I don't want to be captious about things.

Mr. Bullitt: Ask him what he said.

Q.204. (By Judge Henson) Now, Mr. Vreeland, this knowledge came to you, then, that the government was not allowing you this because of the failure to substantiate the claim or failure to explain it? That is substantially what it is?

Mr. Bullitt: I object to that. The letter speaks for itself as far as the government is concerned.

Q.205. I will read it: "Legal expense assessed by Insurance Executives Association is disallowed for failure to substantiate the nature and reason for such expenditures.....$4,000.00." A. Yes.

Q.206. I have read that correctly from there? A. Yes.

Q.207. Who put this memorandum over here, "OK do not protest"? Somebody in your office evidently put that on there. A. I couldn't say.

Q.208. Do you recall the handwriting of any of them? A. No.

Q.209. Did you put that on there? A. No.

The Special Master: Were you consulted about what to do about it?

A. No, that is not my handwriting.

The Special Master: I say, were you consulted about what to do about it?

A. Yes.

Q.210. (By Judge Henson) Whom did you consult with about it? A. I will try to tell you the best of my

recollection what happened. The examiner came in and ran across this item on our books and made inquiries as to what it was for, and we told them, "There it is, $4,000.00 legal expenses." What? Legal expeneses in connection with the Missouri impounded premium, and he wanted more information and they couldn't give it to him, and so he said, "All right, then, they wouldn't allow it."

Q.211. Said what? A. They wouldn't allow it, and so later on our accountant told me about it. Well, I thought—I don't know about the date—I thought that that money would be accounted for, we would be given credit for it and we could tell them no more than that, so let it go. It was as broad as it was long.

Q.212. Why didn't you try to find out so you could give the examiner the information? A. Well, I don't know.

Q.213. Why didn't you write to Mr. Street or Mr. Haid or somebody to give you the information? A. Well, it didn't seem to me to be necessary.

Q.214. Isn't it a matter of fact you decided that you would rather let the item go in your income tax there without the benefit of credit rather than to explain it? A. No, I did explain it.

Q.215. Why didn't you explain it? A. I did.

Q.216. What did you tell them? I want your explanation. A. I don't know that I told them myself.

Q.217. Well, who did in your company? A. Our accountant told them.

Q.218. What did he tell them? A. That which I had told him when I told him to draw the check, that it was for legal expenses in connection with the Missouri impounded premiums.

Q.219. Then when this question of income tax came up, of course, after the year 1935, it would be? A. Must have been, yes.

Q.220. They came back after that and you had an opportunity there to explain it to the government. You couldn't do it as to what the item was? A. I couldn't do any more than it was legal expenses for the Missouri lawsuit.

Q.221. Why didn't you write Mr. Street, he was still living. Why didn't you write Mr. Street and ask him what it was for? A. Well, it never occurred to me it would be necessary.

Q.222. Did you consult Mr. Long or Mr. Bissell or any of these other executives here in Hartford about it to find out what the item was? A. No.

Q.223. And you realized that if you could get that information there is a possibility that you could have the benefit of that credit if you would just do that, is that true? A. I had in mind that it was as broad as it was long, that if he needed further explanation, I couldn't give it to him, and that this money would come back to us. I don't know about the date, if it was later, much later that it had already come back to us in another account.

Q.224. Is that all the explanation you have now to make about the income tax controversy? A. Yes.

Q.225. You know the handwriting of the executives up there in your office, don't you? A. Yes.

Q.226. Well, I would like to ask you to look at this Exhibit 224a and give me your opinion as to who wrote the words up here "no protest," and down here "OK do not protest," if you can give me a reasonably certain opinion. I don't ask the impossible. A. No, I can't do it. We have a half dozen or a dozen accountants there.

Q.227. Give us the names, then, of these accountants. I guess we can send for them. A. Mr. Talcott or Mr. Owen, I should say. They are the two heads of departments there.

Q.228. You don't know their handwriting, as I understand you? A. It doesn't look to me like Mr. Talcott.

Q.229. What about the other man, does it look like his? A. I have looked at it. You can see, it is definitely put down there and isn't even in line.

Mr. Bullitt: Whom do you want? We will get anybody you want.

Judge Henson: Yes, surely.

Mr. Berger: You don't handle the income tax matter?

A. No.

Mr. Bullitt: If you want anybody and will tell us—

Judge Henson: I knew you would.

Mr. Bullitt: Just tell us. There is no use waiting.

Judge Henson: I am trying to find out from him who I want.

Mr. Bullitt: He said he wouldn't know.

Judge Henson: How do I know if he doesn't? That is all.

Cross Examination by Mr. Bullitt.

XQ.230. Isn't it a fact that Mr. Haid or someone got a general ruling from the Bureau of Internal Revenue that the payments that were made out for legal expenses in connection with the Missouri rate litigation could not be deducted for the year in which they were paid, but would have to wait for the year in which the final distribution was made? A. I haven't heard that.

XQ.231. The first check of $4,000.00 was made payable to R. J. Folonie, attorney, wasn't it? A. Yes.

XQ.232. Who was the attorney for your company in the Missouri state litigation? A. Folonie.

XQ.233. So you paid that to your own attorney, didn't you? A. Yes.

XQ.234. That, as well as the 1936 payments, were both charged on your books to legal expense, weren't they? A. Yes.

XQ.235. Did your company ever ask—weren't your attorneys, Hicks and Folonie and Mr. Berger looking out for the litigation in your case? A. Yes.

XQ.236. In Missouri? A. Yes.

XQ.237. Did you or your company ever ask Mr. Street either by letter or telegram, telephone or personal conversation, to look after that lawsuit for you? A. No, not that I know of.

XQ.238. There is a difference between somebody coming around and gathering up checks from you and your sending your check over to the Phoenix to be sent to New York with theirs, isn't there? A. Yes.

The Special Master: If you never authorized Mr. Street to have anything to do with the lawsuit, why did you deal with him at all when he came here?

A. Well, he was chairman of this committee who was acting under the advice of attorneys. He was administering this case for all of the companies, including our own.

The Special Master: Well, the way you answered the question it sounded like you had never given any authority to him at all. How did they ever get to handling it? How could they handle this lawsuit for you without your consent? I don't understand it.

A. Well, we never gave any specific consent. This was a committee whose jurisdiction included Missouri,

and when the case was brought up ten years ago or fifteen years ago, they undertook the administration of it in connection with the attorneys for all of the companies, members of the Western Underwriters Association.

The Special Master: Did they do that without the consent of the companies?

A. I think so. I think it would automatically be done.

XQ.239. (By Mr. Bullitt) Isn't it a fact that it was the Missouri Inspection Bureau that had these suits brought in your name and you accepted that action and ratified it? Isn't that what really happened? A. Probably so.

XQ.240. And wasn't the Subscribers' Actuarial Committee a mere self constituted general looking out for and forwarding it to the companies? Is that all they did? A. I think so.

XQ.241. Your company never by word of mouth or in writing ever asked them to do anything for you? A. Nothing.

XQ.242. And they just notified you from time to time of what was going on in the litigation. Now, isn't that really what happened? A. Yes.

Mr. Bullitt: That is all.

Re-Direct Examination by Judge Henson.

RDQ.243. Who brought that suit for you? A. Our attorneys.

RDQ.244. Did you tell them to bring it? A. No.

RDQ.245. You have taken the benefits of the case and the impoundments that have been ordered out there by court, haven't you? A. Yes.

RDQ.246. When did you discover you had a case down there? A. Well, that is fifteen years ago, I presume, that we were served with the customary—

RDQ.247. (Interrupting) This was your own suit. Your company brought this suit there in Missouri in the federal court. Now, you didn't authorize anybody to bring it? A. Well, you mean this last?

RDQ.248. Yes; by "last" I mean the suit that was filed June 1, 1930. A. I presume that our attorneys would bring it.

RDQ.249. Who are your attorneys? A. Folonie.

RDQ.250. Well, now, at this meeting here in May, 1935, at which or right at the same day you issued a check to Folonie as attorney for $4,000.00, did Mr. Street or any-

body else say Mr. Folonie was wanting any money? A. No.

Judge Henson: I believe that is all.

Re-Cross Examination by Mr. Bullitt.

RXQ.251. But you paid the money to Folonie? A. Yes.

Mr. Bullitt: That is all.

(Witness excused.)

FREDERICK M. DOMINICK, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Where do you live? A. Braintree, Massachusetts.

Q.2. What is your connection with the Boston group? A. Assistant secretary.

Q.3. That group consists of the Boston Insurance Company and the Old Colony Insurance Company? A. Yes.

Q.4. What is the relation of these companies to each other? A. The Old Colony is the subsidiary of the Boston, the parent company.

Q.5. The Old Colony is the subsidiary company? A. Yes.

Q.6. It is under one management? A. Yes.

Q.7. Is that the condition that existed in 1935 and 1936? A. It is.

Q.8. Were you assistant secretary to these companies at that time? A. I was.

Q.9. When did you first learn anything about a compromise of the Missouri rate litigation? A. My recollection is the latter part of 1935.

Q.10. How did that information come to you? A. Through the Journal of Commerce.

Q.11. Is that a trade journal? A. It might be called so.

Q.12. Did you have then before you the terms of the settlement? A. I think there was some statement or article in the Journal of Commerce that gave the percentages of distribution.

Q.13. Then, of course, you learned that a decree had been entered in the federal court in conformity with that compromise, did you not? A. I did.

Q.14. That was in February of 1936? A. That is right.

Q.15. Then you received a circular from the Actuarial Committee? A. We did.

Q.16. And it gave you in detail the terms of the settlement? A. It did.

Q.17. The Actuarial Committee and Mr. Street, the chairman, were handling that litigation for your company as well as the other companies? A. That is right.

Q.18. Now, prior to the time that you had received this official communication had you heard anything about a fund of $100,000.00 or any other amount being raised here in Hartford or New York? A. No, sir.

Q.19. When was the first time that you ever heard of this $100,000.00 fund? A. Today.

Q.20. That is the first time you had any information concerning it? A. Yes, sir.

The Special Master: That is comparatively recent.

A. It couldn't be much sooner, much more so.

Q.21. (By Senator Hollingsworth) Now, in March of 1935, did you receive a—

Mr. Bullitt (Interrupting): 1936, you mean?

Q.22. (By Senator Hollingsworth) 1936 is right. Did you receive a 11 per cent dividend out of the 30 per cent fund? A. We received a 11 per cent check for 11 per cent of our impounded premiums up to a certain date.

Q.23. You received that from the trustees? A. My recollection is that it was.

Q.24. The trustees, under the settlement, held 30 per cent for the payment of expenses? A. They were to be paid 30 per cent.

Q.25. For the purpose of paying the expenses of the litigation? A. Yes.

Q.26. So when you received the 11 per cent you understood that the 30 per cent was more than adequate to pay all of the expenses? A. That was an assumption.

Q.27. You did so assume? A. Gathered that.

Q.28. Now, on that very day or about that time, did you learn anything about an assessment of 5 per cent? A. Yes.

Q.29. From whom did you first learn it? A. Mr. Green of our office, vice-president.

Q.30. What did Mr. Green say to you? A. He told me that he had received a telephone conversation from Mr. Haid's office, Mr. Erskine called him and asked

us to send a check for 5 per cent of our impounded premiums up to a certain date.

Q.31. What else did Mr. Greene say? A. He asked me to send the check.

Q.32. Did he tell you what the 5 per cent was for? A. No.

Q.33. Did you ask him? A. No.

Q.34. Was there anything said between you and Mr. Greene as to what it could be? A. Mr. Greene gave me a typed memorandum of the conversation which he had with Mr. Erskine.

Q.35. You have it in your hand?

Mr. Bullitt: You have it right there, dated March 21, 1936.

(Photostatic copy of a letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 226, EFM.")

Q.36. (By Senator Hollingsworth) I hand you Defendants' Exhibit 226 and ask you to state if that is the document written by you or Mr. Greene. A. That was written by me.

Q.37. Now, it refers and quotes in there from a memorandum. Was that the memorandum that you mentioned Mr. Greene handed you? A. Yes.

Q.38. Then what became of the original memorandum which Mr. Greene handed you? Was that destroyed? A. No.

Q.39. Where is it? A. It was in our files.

Q.40. You have it there now, do you? A. Yes.

Q.41. In your files. Is the quoted portion—

Mr. Berger (Interrupting): Would you like to have the original? It is upstairs in their files if you would like to have it.

Senator Hollingsworth: Let me see, and if I do, I will.

Q.42. (By Senator Hollingsworth) Is the quoted portion in the letter written by you—does it contain all of the memorandum that was made by Mr. Greene? A. No.

Q.43. What else was on the memorandum that you have not quoted? A. Simply a memorandum showing the amounts of the check which we were asked to send and the amount of checks which we were to receive, and I had that written on that memorandum to whom our check was to be made payable.

Q.44. That memorandum is in your files? A. Yes, it is here in the building.

Q.45. Then you wrote this Defendants' 226 addressed to Mr. Hewett? A. Yes.

Q.46. Who is Mr. Hewett? A. He is a vice-president in charge of our Western Department, manager of our Western Department.

Q.47. You wanted to give Mr. Hewett the information that was set out in this memorandum? A. Yes.

Q.48. Had Mr. Hewett asked for the information? A. No.

Senator Hollingsworth: I now offer in evidence Defendants' Exhibit 226.

(Which said Defendants' Exhibit 226, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

March 21, 1936.

Mr. H. L. Hewett, Vice President, Western Department,

Hollister Building, Lansing, Michigan.

MISSOURI IMPOUNDED PREMIUMS

Dear Mr. Hewett:

Evidently it was extremely urgent, as we had a telephone call this morning from a Mr. Erskine of Haid's office (Insurance Executives Association). He dictated the following message:-

"To facilitate the transaction, Mr. C. F. Street, who as you know has personally directed the rate litigation in Missouri, has asked us to transmit to you an additional payment amounting to 11% of the total amount of impounded premiums as of May 1, we to forward two checks at once, one is for the Boston and the other is for the Old Colony, total amount of the two being $13,413.73.

As Mr. Street has immediately to meet expenses which require approximately 5% of the impounded premiums, may we promptly have your Boston check for $6,097.13, made payable to C. F. Street, Agent or, if you prefer, to F. J. Folcomb. In accordance with Mr. Street's suggestion, please do not make your check payable either to him or to Mr. Folcomb as Trustee.

We presume you will want to charge this as legal expense."

As requested, we have sent Boston check for $6,097.13 payable to C. F. Street, Agent--see enclosed letter. Temporarily we are charging this payment to you as a suspense item and when we know more about it, can adjust the transaction.

I've made a rough stab to arrive at the $13,413.73 that we are to receive for the Boston and Old Colony combined. This amount represents 11% of $121,943, which is fairly close to the amounts which your July 1935 Accounts show as deposited with the Missouri Custodian. It doesn't check out perfectly and I suppose there will be an accounting later to straighten this out.

Yours very truly,

F. M. Dominick
Assistant Secretary

FMD/MW

Q.49. (By Senator Hollingsworth) This letter is dated March 21, 1936, and says, "Dear Mr. Hewett: Evidently it was extremely urgent, as we had a telephone call this morning from a Mr. Erskine of Haid's office (Insurance Executives Association). He dictated the following message:—"

Now, what did you mean by "Evidently it was extremely urgent"? What were you referring to? A. Simply because they wanted the checks mailed that day.

Q.50. Did Mr. Erskine tell you it was extremely urgent? A. No, other than that message there, that speaks for itself.

Q.51. Then you quote:

"To facilitate the transaction, Mr. C. R. Street, who as you know has personally directed the rate litigation in Missouri, has asked us to transmit to you an additional payment amounting to 11% of the total amount of impounded premiums as of May 1, we to forward two checks at once, one is for the Boston and the other is for the Old Colony, total amount of the two being $13,413.73."

Now, what transaction does it refer to here "To facilitate the transaction"? A. I don't know.

Q.52. Did Mr. Greene know? A. I don't think so.

Q.53. Now, you got a call, as I understand it, from Erskine's office and you were to facilitate a transaction by sending checks for $13,000.00 and some odd dollars. Didn't you know what transaction you were facilitating?

Mr. Bullitt: Hold on a minute. I object to that because he said the word "you" to this gentleman as though he were the one who got the telephone message.

The Special Master: Yes, that is right.

Mr. Bullitt: I object to the question.

Q.54. (By Senator Hollingsworth) Didn't Mr. Greene tell you what transaction you were facilitating? A. He gave me that memorandum, the memorandum is the only information I have.

Q.55. When you undertook to write to Mr. Hewett, you didn't know what transaction it referred to? A. Other than it related to the Missouri litigation expense.

Q.56. But the nature of the transaction in Missouri relating to the Missouri rate litigation was not known to you at the time you prepared these checks and dictated this memorandum? A. No.

Q.57. Did you ask Mr. Greene if he knew what it was? A. No.

Q.58. You were undertaking to pass some information along to Mr. Hewett, were you? A. All we had.

Q.59. All you had. Well, did you realize that there was something very vague and mysterious about the whole matter? A. No, not at the time.

Q.60. Did the thought suggest itself to you at the time you dictated the memorandum? A. No, not the slightest.

Q.61. Didn't enter your mind at all? A. No.

Q.62. And still you didn't know what you were talking about? A. It says "legal expenses had to be paid," and we just jumped at conclusions.

Q.63. But "to facilitate the transaction," did the inquiry come to you as to the nature of the transaction in which you were sending out these checks? A. Not at all, not in the slightest.

Q.64. Still you didn't know? A. That is right.

Q.65. And don't know today what he had in mind? A. No.

Q.66. Sir? A. No, I only jumped at conclusions is all, as to what would later develop.

Q.67. "As Mr. Street has immediately to meet expenses which require approximately 5% of the impounded premiums, may we promptly have your Boston check for $6,097.15, made payable to C. R. Street, Agent or, if you prefer, to R. J. Folonie. In accordance with Mr. Street's suggestion, please do not make your check payable either to him or to Mr. Folonie as Trustee." That was part of Mr. Erskine's memorandum? A. That is right.

Q.68. Which Mr. Greene had taken down and then you copied in a letter to Mr. Hewett. Did that part of the letter cause any inquiry in your mind as to what was going on? A. No.

Q.69. You had no curiosity about it? A. No.

Q.70. And never undertook to find out from that day on? A. Yes.

Q.71. When? A. We wrote Mr. Street for a voucher for the payment on several occasions.

Q.72. You did write him? A. Yes.

Q.73. On several occasions? A. Yes.

Q.74. Did you get any response? A. We got a receipt for each company.

Q.75. How many occasions did you write him on before you got it? A. I think two or three times.

Q.76. Those letters or copies of those letters are not in the file furnished to the district attorney when the records were requested, were they? A. We didn't enclose those.

Q.77. Why didn't you? A. No reason at all for not doing it except it wasn't in accordance with the request from the district attorney.

Q.78. Do you have a written request from the attorney?

Mr. Berger: The copy of that was put in.

The Special Master: It is in the record.

A. He said what he wanted.

Mr. Berger: That is the second sheet of your records.

Q.79. (By Senator Hollingsworth) Then the memorandum further reads, "We presume you will want to charge this as legal expense." That is what Mr. Erskine dictated? A. Yes.

Q.80. Mr. Greene didn't tell you that Mr. Erskine had said in what case or particular phase of the case that was to be charged as legal expense? A. As far as I know that is all the conversation.

Q.81. That is all that you know. Did you say anything to Mr. Greene or Mr. Greene say anything to you as to why you should be assessed 5 per cent out of this 11 per cent dividend? A. I don't recall anything.

Q.82. And return back 5 per cent of what you had already gotten? A. I don't recall any conversation.

Q.83. Did the inquiry come into your mind about it? A. No.

Q.84. You didn't know what it was for and still had no curiosity to find out? A. No.

Mr. Bullitt: Now, if your Honor please, I object to that on the ground it is calling for a conclusion of the witness and contradicts the very papers that he has introduced. The witness already has said he had curiosity enough to write two or three times to get a voucher and the voucher satisfied. You haven't introduced that fact.

Senator Hollingsworth: Yes, I know exactly what I have in mind.

The Special Master: I don't believe that it is. The only objection that I know to it, if you will just keep in mind what we are trying to find out here. I think the question is all right with the possible exception that it is leading when the witness hasn't shown any disposition to evade.

Mr. Bullitt: I don't object to it on that ground.

Q.85. (By Senator Hollingsworth) Now, here is the voucher of March 25, 1936, is that what you refer to, a letter from Mr. Street:

"Received of the Boston Insurance Company the sum of $5,250.55 in payment of that Company's assessment for attorneys' fees and other expenses in connection with pending rate litigation in the State of Missouri." A. Yes.

Q.86. Now, you say you wrote Mr. Street two or three times? A. I did.

Q.87. Do you have those carbon copies?

Mr. Bullitt: What is that? You haven't given the signature to it yet.

Senator Hollingsworth: C. R. Street.

Mr. Bullitt: Well, I didn't know. Nobody would know whether it was the King of England.

Senator Hollingsworth: I stated it was a letter from C. R. Street.

Mr. Berger: They have a file here. Let me go up and see if it is here.

(Photostatic copy of vouchers and letter, handed to the reporter, were marked for identification as "Defendants' Exhibits 227, 227a and 228, EFM," respectively.)

Q.88. (By Senator Hollingsworth) I show you Defendants' Exhibit 228, is that a letter dictated by you? A. It is.

Q.89. To Paul L. Haid? A. Yes.

Senator Hollingsworth: I offer that in evidence.

(Which said Defendants' Exhibit 228, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

FVD/MAM

March 21, 1936.

Mr. Paul L. Haid, President,
Insurance Executives Association,
116 John Street,
New York, N. Y.

Dear Sir:

Re: [illegible] IMPOUNDED PREMIUMS

As requested in Mr. Erskine's phone call this morning we are enclosing Boston Insurance Company check for $6,097.15, which we have made payable to C. F. Street, Agent. We understand this payment represents 5% of the impounded premiums, presumably of the Boston and Old Colony combined as of May 1, 1935.

We understand that we will receive two checks: one payable to the Boston and another to the Old Colony, totaling $12,413.73, being 11% of the impounded premiums as of May 1st.

We assume that you will advise us more fully later in connection with these transactions and send receipted statements.

Yours very truly,

F. M. Dumlaick
Assistant Secretary

Enc.

A 278

Mr. Bullitt: Did you offer 227?

Senator Hollingsworth: Not right at this time.

Q.90. (By Senator Hollingsworth) Did you ever get any reply to that letter addressed to Mr. Haid? A. I think we did, but I am not absolutely sure.

Q.91. But on March 25th you did get the letter from Mr. Street which has been marked Defendants' Exhibit 227, and which I now offer in evidence? A. That receipt was dated March 25, 1936, but I think it was received sometime after that.

(Which said Defendants' Exhibits 227 and 227a, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

SOUTHEASTERN AGENCIES CONFERENCE
222 WEST ADAMS STREET
(P O BOX 1060)
CHICAGO, ILL.

3/23/36

March 25, 1936.

Received of the Old Colony Insurance Company the sum of $846.60 in payment of that Company's assessment for attorneys' fees and other expenses in connection with pending rate litigation in the State of Missouri.

W. R. Greer

Agent for companies involved
in said litigation.

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SUBSCRIBERS' ADVISORY COMMITTEE
222 WEST ADAMS STREET
P.O. BOX 7091
CHICAGO ILL.

March 25, 1936.

Received of the Boston Insurance Company the sum of $5,250.55 in payment of that Company's assessment for attorneys' fees and other expenses in connection with pending rate litigation in the State of Missouri.

Agent for companies involved in said litigation.

Q.92. (By Senator Hollingsworth) How much later than March 25, 1936, was it that you actually received that receipt? A. Probably two months.

Q.93. And in the meantime you had written a number of letters? A. Two or three, to comply with the Massachusetts insurance law.

Q.94. Did you get replies to those letters or they simply went unanswered? A. I think they went unanswered.

Q.95. And in this letter marked Defendants' Exhibit 227 the only reply that you ever got from Mr. Street concerning this matter, with a similar letter in the same wording as to your parent company? A. You said a "letter." I thought it was a receipt.

Q.96. Well, it is on a letterhead, but is a receipt.

Q.97. Is that the only reply that you got from Mr. Street? A. Yes.

Q.98. Now, when you got this receipt for each of your companies aggregating $6,097.00, recited assessment for attorneys' fees and other expenses in connection with pending rate litigation in the State of Missouri, did you make any further effort to find out to whom the fees were payable and what portion was attorneys' fees and what was other expenses? A. We did not.

Q.99. Did you allocate it all to attorneys' fees? A. It went to legal expense.

Q.100. But you never learned from Mr. Street how much of that was attorneys' fees and how much was other expense? A. No, sir.

Q.101. And never learned to whom it was paid except the story through the press? A. That is right.

Senator Hollingsworth: That is all.

(Witness excused.)

I. LLOYD GREENE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Have you been in the hearing room during the time Mr. Dominick has testified? A. I have.

Q.2. What was your connection with these two companies in 1935 and 1936? A. Vice-president.

Q.3. Do you know anything about a fund of $100,000.00 having been raised? A. I did not.

Q.4. Or any other fund? A. I did not.

Q.5. Did that come to you as news today? A. I read in the Journal of Commerce about it in the last few days.

Q.6. Did you know anything about the pending compromise until after it was actually made? A. I did not.

Q.7. You did know that Mr. Folonie and Mr. Street—you learned, rather, that Mr. Folonie and Mr. Street had been constituted trustees to hold a 30 per cent fund for the payment of expenses of litigation in connection with that case? A. I had read that, yes.

Q.8. Then it appears here that on the morning or on the day, sometime, of March 21, 1936, you had a telephone call from Mr. Erskine? A. I did.

Q.9. Now, Mr. Erskine was the secretary to Mr. Haid? A. Yes.

Q.10. Had the Executives Association ever come into the picture before in this litigation? A. Not that I know of.

Q.11. You knew it had been handled by the Actuarial Committee out of Chicago? A. Yes.

Q.12. And Mr. Erskine called you and carried on this conversation? A. He did.

Q.13. And you made a memorandum of the telephone conversation at that time? A. I dictated it to my stenographer.

Q.14. And you undertook to put into that everything that he had said? A. I did.

Q.15. And that memorandum is set forth here in Defendants' Exhibit 229? A. Yes.

Q.16. Does that contain the whole of the memorandum as you dictated it? A. It does.

Q.17. I note that that refers in the very opening sentence there to a transaction, "to facilitate the transaction, Mr. Street," etc. What transaction did he refer to? A. All he referred to was our paying 5 per cent and we, in return, would receive a check from the committee for 11 per cent.

Q.18. Did he tell you what transaction you were facilitating when you were paying out 5 per cent? A. No, not any more than that.

Q.19. Did you know what transaction you were facilitating? A. No.

Q.20. Did you ask Mr. Erskine? A. I did not.

Q.21. Why didn't you? A. I had no occasion to.

Q.22. Why, you were asked to put out $13,413.73.

Mr. Murphy: They had already taken that.

A. Not as much as that. We were asked to put out $6,000.00.

Q.23. (By Senator Hollingsworth) You were asked to put that out. A. For expenses of the committee.

Q.24. Now, you knew at that time that 30 per cent had been placed in the hands of Folonie and Street as trustees for the purpose of payment of expenses, didn't you? A. I presume I did, only through reading the report, that is all.

Q.25. Now, then, did Mr. Erskine use these words to you, "To facilitate the transaction," you were asked to send a check? A. He did.

Q.26. And it never occurred to you to say to Mr. Erskine, "What transaction? What, Erskine?" A. Nothing more than the case of Missouri.

Q.27. Sir? A. I knew it was the case of Missouri.

Q.28. What phase of it, though? A. I didn't consider the phase of it, except for attorneys' fees.

Q.29. What attorneys' fees did you have in mind when there was 30 per cent allocated for the payment of attorneys' fees? A. 30 per cent wasn't mentioned.

Q.30. Well, it was mentioned and you had heard about it before you got this telephone conversation from Mr. Erskine, hadn't you? A. I presume that I had read of it. That is the only way that I knew about it.

Q.31. Didn't it occur to you then? A. No.

Q.32. Did it afterwards occur to you as a most strange transaction? A. No.

Q.33. It did not? A. No.

Q.34. Well, you knew the information should be passed on to Mr. Hewett? A. Yes.

Q.35. And you had Mr. Dominick pass it on? A. Mr. Dominick passed it on.

Q.36. And you knew it was important for Mr. Hewett to know the nature of it? A. Yes.

Q.37. Why didn't you find out from Erskine so that you could tell Hewett what it was all about? A. We had every confidence in the Haid office, and Mr. Erskine, in the demand of the 5 per cent.

Mr. Berger: That (indicating) is the original memo.

(Said memorandum, handed to the reporter, was marked for identification as "Defendants' Exhibit 229, EFM.")

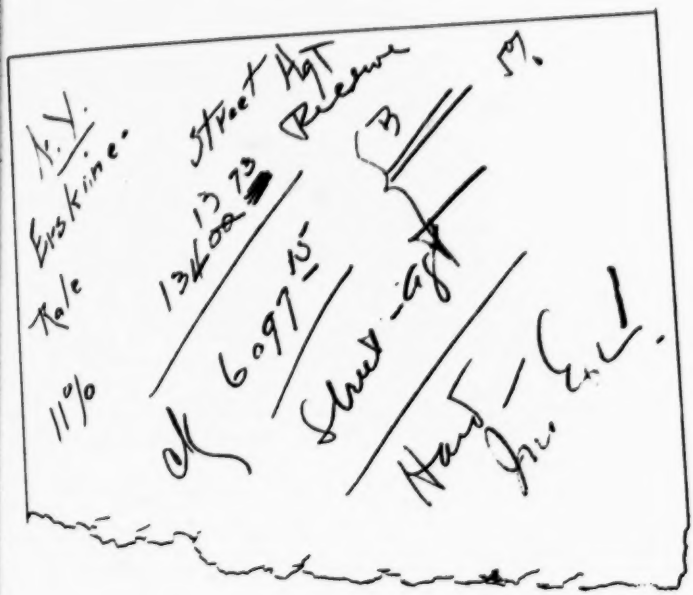
Q.38. (By Senator Hollingsworth) Now, I hand you Exhibit, Defendants' 229, which I offer in evidence. Is that the original memorandum? A. That is the original, yes.

(Which said Defendants' Exhibit 229, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

To facilitate the transaction, Mr. C. R. Street, who as you know has personally directed the rate litigation in Missouri, has asked us to transmit to you an additional payment amounting to 11% of the total amount of impounded premiums as of May 1, we to forward two checks at once, one is for the Boston and the other is for the Old Colony, total amount of the two being $13,413.75.

As Mr. Street has immediately to meet expenses which require approximately 5% of the impounded premiums, may we promptly have your Boston check for $6,097.15, made payable to C. R. Street, Agent or, if you prefer, to R. J. Folonie. In accordance with Mr. Street's suggestion, please do not make your check payable either to him or to Mr. Folonie as Trustee.

We presume you will want to charge this as legal expense.



Erskine

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Q.39. Now, attached to this is another memorandum. Who made that? A. That is the original.

Q.40. The pencil? A. That is the original memorandum in my writing.

Q.41. You wrote that? A. I wrote that up. Mr. Dominick wrote the "Street, agt" and "Haid Ins Exc," and he wrote that "CK" and wrote the "5%."

Q.42. You wrote the "N. Y. Erskine." What is that (indicating)? A. "Rate 11%."

Q.43. "Street." A. "Agt 13,413.73."

Q.44. "Receive," that meant you were going to receive the check? A. That is Mr. Dominick's writing, and that is the amount of the check, $6,097.15.

Q.45. Now, where are the letters?

Mr. Berger: Here are the letters. Mr. Dominick can identify them.

Q.46. (By Senator Hollingsworth) Was there any discussion between you and Mr. Dominick at the time you delivered him the memorandum which has been introduced in evidence as Defendants' Exhibit 229, as to what this transaction could possibly be? A. Except for expenses, no other conversation.

Q.47. No other conversation? A. No.

Q.48. Did he ask you if you understood what it was about? A. He did not.

Q.49. Did you after that discuss with Mr. Dominick or any other person in your office the question of this transaction, trying to determine in your own mind what it was about? A. No.

Q.50. Did it come to your attention that from time to time Mr. Dominick's writing to Mr. Street to find out what it was about? A. No, it did not.

Mr. Berger: I object to the form of the question as not being a fair statement of what—

The Special Master: I am sorry to say I wasn't listening. What was the question? (Question read.) There isn't any such evidence as that.

Judge Henson: That is what he said.

The Special Master: He said two or three times, but he didn't say to find out what it was about.

Mr. Berger: He said he wrote for receipts and vouchers, but not what it was about.

The Special Master: It is all right on the time, but not as to the purpose of it.

Mr. Berger: That is what I was objecting to.

The Special Master: Objection sustained.

Q.51. (By Senator Hollingsworth) When did you first learn or have you ever learned about the transaction to which Mr. Erskine referred in this letter? A. On the telephone the morning of that memoranda.

Q.52. I know, but as I understood you to say, you didn't know what he referred to when he said "this transaction" other than it referred to the Missouri rate cases.

Mr. Murphy: What he said was that he thought the transaction was the delivery of the 11 per cent check and the sending back of the 5 per cent. That was his understanding of the 5 per cent transaction.

Q.53. (By Senator Hollingsworth) Did you ever receive any other information? A. No, I did not.

Q.54. Have you ever endeavored to find out? A. I have not.

Q.55. Did Mr. Erskine tell you that it was extremely urgent to get the check there? A. He asked me to send that check that day.

Q.56. Did you get the impression that it was extremely urgent to get the check there immediately? A. I got the impression that he would like to have the check that day or have it mailed that day.

The Special Master: That answers your question, Mr. Hollingsworth.

Q.57. (By Senator Hollingsworth) Did you attend any meeting of any Hartford insurance men or New York insurance men in the spring of 1936? A. No.

Q.58. When this 5 per cent assessment was being discussed? A. No.

Q.59. Did you ever attend any meeting where it was discussed? A. Never have.

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.60. Prior to the telephone conversation with Mr. Erskine in March, 1936, had you ever had anything whatever to do with the Missouri rate litigation, its progress, how it was being handled or what was being done in it? A. Not a thing.

Mr. Bullitt: That is all right. That is all.

(Witness excused.)

Senator Hollingsworth: I would like to recall Mr. Dominick.

FREDERICK M. DOMINICK, recalled as a witness on behalf of the defendants, having been previously duly sworn, testified further as follows:

Direct Examination by Senator Hollingsworth.

Q.102. I again show you Defendants' Exhibit 228, which is a letter to Mr. Haid. I presume that is your first letter in regard to these checks. Now, after writing to Mr. Haid on March 21, 1936, will you give me the next correspondence, either copy of your letter or original received by you, as they came into your office or went out. A. They are not here.

Q.103. Sir? A. They are not here.

Mr. Berger: The letter of Mr. Street of April 23rd, acknowledging the two checks, and the next letter we could find was the letter of June.

Q.104. (By Senator Hollingsworth) Is there a letter missing? A. I think there is. That is my impression. I thought that I had written Mr. Street previous to this letter of June 4th asking for a receipt.

Q.105. Evidently that is not in your file? A. It is, presumably, at the home office.

Q.106. What was the next communication? Did you write Mr. Street again before you heard from him or did you hear from him? A. This letter here (indicating) was the one that brought in the receipt.

(Carbon copy of a letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 230, EFM.")

Q.107. (By Senator Hollingsworth) Now, I hand you Defendants' Exhibit 230, which appears to be a copy of a letter written by you to Mr. Street under date of June 4th, 1936, and which I now offer in evidence.

(Which said Defendants' Exhibit 230, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 230.

FMD/MMW June 4, 1936.

Mr. C. R. Street, Vice President,
Great American Insurance Company,
310 South Michigan Avenue,
Chicago, Illinois.

Dear Sir:

Re: Missouri Impounded Premiums

Referring to your letter of April 13th, Mr. Hedge did not attend the White Sulphur meeting and, there-

fore, have heard nothing regarding the full report on the Missouri rate situation. We are not so much interested in the report as we are in obtaining a proper receipt for the $6,097.15 paid to you as Trustee on account of certain legal expenses.

Our Massachusetts Insurance Law states that:

'No domestic company shall make any disbursements of $25.00 or more.....unless the same be evidenced by a voucher signed by or on behalf of the person receiving the money and correctly describing the consideration for the payment; and if the same be for services and disbursements, setting forth the services rendered by an itemized statement of the disbursements made;.....or if such a voucher cannot be obtained by an affidavit stating the reason for not obtaining such voucher and setting forth the particulars above mentioned.'

Will you please see that we are furnished with proper vouchers or affidavits for the:-

Boston Insurance Company	$5,250.55
Old Colony Insurance Company	846.60
Total	$6,097.15

Yours very truly,

F. M. Dominick
Assistant Secretary"

Mr. Berger: That refers to a letter of April 13th.

Senator Hollingsworth: Now, I will have this marked.

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 231, EFM.")

Q.108. (By Senator Hollingsworth) I notice your letter of June 4, 1936, being Exhibit 230, refers to a letter of Mr. Street's dated April 13, 1936, which has been marked Defendants' Exhibit 231. Do you recognize that letter? A. I do.

Senator Hollingsworth: I now offer that in evidence.

(Which said Defendants' Exhibit 231, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

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WESTERN DEPARTMENT
310 SOUTH MICHIGAN AVENUE
POST OFFICE BOX 788
CHICAGO

Great American Insurance Company New York

C.R. STREET
Vice President
G.D. GREGORY
Secretary

CHICAGO April 13, 1936.

Mr. F. M. Dominick, Ass't Secretary,
Boston Insurance Company,
Boston, Mass.

Dear Sir:

I acknowledge the receipt from you of check for $6,097.15 in payment of Boston and Old Colony share of Missouri litigation expenses.

Full report on Missouri will be made at the White Sulphur meeting next week, which President Hedge will probably attend.

Yours very truly,

C R Street

D 231

Senator Hollingsworth: I would like to show it to the Master.

Q.109. (By Senator Hollingsworth) Now, in this letter Mr. Street says that a "Full report on Missouri will be made at the White Sulphur meeting next week, which President Hedge will probably attend." Did Mr. Hedge attend that meeting? A. I don't think he did.

Q.110. I call your attention to your letter of June 4, 1936, in which you recite that he did not attend. Does that refresh your recollection? A. It does.

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 232, EFM.")

Senator Hollingsworth: I now offer in evidence Defendants' Exhibit 232, which is, I believe, a letter from Mr. Street dated June 8, 1936, and you so recognize it?

A. I do.

(Which said Defendants's Exhibit 232, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

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C.R.STREET
Vice President

G.D.GREGORY
Secretary

Great American Insurance Company New York

WESTERN DEPARTMENT
340 SOUTH MICHIGAN AVENUE
POST OFFICE BOX 752
CHICAGO

June 8, 1916.

Mr. F. M. Dominick, Ass't Secretary,
Boston Insurance Company,
Boston, Mass.

Dear Sir:

As requested in yours of the 4th, am enclosing herewith vouchers for the Boston and Old Colony evidencing payments to me as Agent for expenses in the Missouri case.

Yours very truly,

C R Street

Vice-President.

2.77

Q.111. (By Senator Hollingsworth) Now, that states he is sending you the vouchers "evidencing payments to me as Agent for expenses in the Missouri case." A. Yes.

Q.112. Did you consider that those vouchers, together with that letter constituted a sufficient explanation as to these fees? A. I did.

Q.113. Did you so enter them on your books then in that manner? A. No.

Q.114. Had you entered them on your books prior to that time in your regular accounts? A. When the checks were drawn they were entered as cash paid out.

Q.115. Of course, you didn't put on there then what it was for? A. Yes, to the best of our knowledge at the time.

Q.116. What was the legal expense? A. May I refer to my exhibit?

Q.117. Yes, I want you to. I don't want to clutter up the record. A. Our check stated—shall I read it?

Q.118. Yes. A. "On account of legal expense, Missouri impounded premium rate case."

Q.119. Then that entry stood that way on your books after you received Mr. Street's vouchers and letter? A. Yes.

Mr. Berger: That was before that.

The Special Master: Yes, but he said it "stood" on, he means remained.

Q.120. (By Senator Hollingsworth) Did you have anything to do with the making of your income tax return for the year of 1936? A. Yes.

Q.121. Did you claim credit for this disbursement? A. We did.

Q.122. Was it allowed or disallowed? A. The examiner has disallowed it, but the case hasn't been closed. We are—

Q.123. (Interrupting) On what ground did he disallow it? A. We are still waiting for a hearing.

Q.124. What ground did he disallow it on?

Mr. Bullitt: I object to that, if the ground was in writing, unless the writing is produced.

The Special Master: Did he give you in writing the reasons?

A. I believe that it was in his report of the audit of our income tax return.

The Special Master: Well, if they contested the ruling and didn't acquiesce in the ruling, what consequence is it?

Senator Hollingsworth: It would depend on the ground.

Q.215. (By Senator Hollingsworth) I will ask you this: Was it on the ground that you had not made sufficient showing that it was for legal fees?

Mr. Bullitt: I object to that unless the paper speaks for itself.

The Special Master: He is objecting unless you produce the written evidence, if you have it. Of course, I will have to sustain it.

Q.126. (By Senator Hollingsworth) Have you got it? A. It isn't here. It is in Boston.

Q.127. It is in Boston? A. Yes.

Q.128. Well, after it was disallowed, did you make any endeavor to ascertain the exact nature of the legal fees that it covered? A. No.

Mr. Bullitt: I object to that on the ground it says "legal expenses."

Q.129. (By Senator Hollingsworth) Well, legal expenses. A. No.

Q.130. Did you set up a written representation or claim as to why it was allowable after it had been originally disallowed? A. We submitted, I believe, photostatic copies of these receipts which Mr. Street gave us as evidence of a payment for legal expenses.

Q.131. Have you done anything else in the way of assembling testimony or evidence for the purpose of establishing your claim other than—

Mr. Bullitt: (Interrupting) I object to that as irrelevant and immaterial because their controversy with the government has nothing whatever to do with this case.

The Special Master: I am going to allow it only to this extent, you can answer as to whether you personally have done it because if he personally got any information, we will find out what it is.

Mr. Bullitt: Well, that is all right. I don't mind.

The Special Master: My knowledge as a lawyer would lead me to believe that the chances are 99 per cent that either a lawyer or a tax accountant has made the investigation, and not this man. However, if you want to ask him if he personally made the investigation, you may be permitted to do so.

Q.132. (By Senator Hollingsworth) I do so ask you. A. Will you please repeat your question?

Q.133. Have you personally done anything in trying to establish this claim for the allowance other than

submit the photostatic copies of the Street letters and vouchers heretofore put in evidence? Are you handling the income tax matter for your company in this matter? A. No. Well, I will answer it this way, I do the dirty work.

Q.134. And some lawyer does the rest of it?

The Special Master: Let me ask you if it is this way—

A. I should say the detail work instead of "dirty."

The Special Master: If somebody is making an income tax investigation, if they call on you for anything in your possession, do you produce it?

A. Yes.

The Special Master: Do you have anything further to do with it than that?

A. No, I don't believe so, and talk with the examiner if there is any question.

The Special Master: If he wants to see the books, he wants to know what that means?

A. Yes.

Q.135. (By Senator Hollingsworth) But so far as conducting the tax case is concerned, am I right that it is your function to furnish what you are asked for? A. Absolutely.

The Special Master: That is the way they are all conducted.

Senator Hollingsworth: I think that is all.

Mr. Bullitt: I don't want to ask any questions.

(Witness excused.)

WILLIAM R. HEDGE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. What is your connection with the Boston Insurance Company group? A. I am the president of the Boston Insurance Company and president of the Old Colony Insurance Company.

Q.2. Were you president in 1935 and 1936? A. Yes, sir.

Q.3. You have been here in the hearing room while Mr. Dominick and Mr. Greene were interrogated? A. Well, for the most part. I went upstairs to get a certain paper that you asked for. I didn't hear Mr. Greene's testimony.

Q.4. When did you first hear anything of a compromise or possible compromise of the Missouri rate litigation? A. Well, I couldn't answer that positively, but I think I would be correct in saying that we saw notices in the papers and Mr. Dominick stated in the Journal of Commerce of New York, and I think probably that was the correct answer.

Q.5. Did you know anything about a fund of $100,000.00 or any other amount being made? A. I never heard of it until today.

Q.6. Did you ever have any contact with Mr. Street in regard to the compromise of this case? A. Absolutely no, never even discussed the case with him at any time.

Q.7. I notice a letter in here from Mr. Street in which he says something about Mr. Street making an explanation to him. The letter is a promise to make an explanation, that—

Mr. Bullitt: There is a difference between an expression of intention and—

Q.8. (By Senator Hollingsworth) Well, I show you Defendants' Exhibit 231, so that it may be literally before you. A. Yes, sir. What is the question, please?

The Special Master: He is going to reframe his question.

Q.9. (By Senator Hollingsworth) I am going to ask you, was a full report on Missouri made at the White Sulphur meeting the week following April 13th? A. I do not know whether there was or not.

Q.10. Did you attend White Sulphur? A. I did not at that time.

Q.11. Did this letter come to your attention at the time or about the time it was received in the office? A. Those initials there, "WRH" meant that it was referred to me. It came to my desk. That "Chis" is short for Chisholm, our secretary's name, and that was in my handwriting and, therefore, it must have come to my attention.

Q.12. Did you ever at any time get a report from Mr. Street concerning this matter? A. Never did.

Q.13. Did you ever endeavor to get one other than the correspondence which has been heretofore identified? A. No, sir, for the reason I expected ultimately there would be a complete file and accounting to the last nickel.

Q.14. But that never came? A. Not as yet.

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.15. The controversy over the impounded fund isn't over yet, is it? A. I don't know anything about that, sir.

XQ.16. You have a large amount of the money still in the hands of the Court, haven't you? A. Yes.

XQ.17. That hasn't been distributed? A. No.

The Special Master: Some people think it has just started.

Mr. Bullitt: I am one of those.

(Witness excused.)

F. B. LUCE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Holman.

Q.1. Mr. Luce, you are an official of the Providence Washington Insurance Company? A. Its vice-president.

Q.2. Did you hold that position in 1935 and 1936? A. Yes, sir.

Q.3. You were familiar with the Missouri rate litigation pending in the federal court at Kansas City, I believe, since 1930? A. Yes, sir, more or less.

Q.4. You have some knowledge of that during all of the stages of that litigation; who handled that litigation for your company? A. The Missouri Inspection Bureau collaborating with the Subscribers' Actuarial Committee.

Q.5. They had charge of the litigation for your company and the other companies? A. Yes.

Q.6. And you knew that Mr. Street of Chicago was actively in charge of the litigation as chairman of the Subscribers' Committee? A. As chairman of the Subscribers' Committee.

Q.7. That is right, and you had no objection to those people handling the litigation for your company? A. No, sir.

Q.8. Did you about May or June, 1935, hear that or learn in any way that this litigation had been settled? A. I have a recollection of having read it in the paper and later on seeing a bulletin from the Subscribers' Actuarial Committee.

Q.9. Now, to refresh your memory, that bulletin came out about February, 1936, after the decree had been entered approving the settlement by the federal court? A. That must have been the bulletin I saw.

Q.10. And that bulletin set out the terms of the settlement and the decree, did it not? A. Well, as I remember it, that was the bulletin that decreed the division of the impounded premiums to 50 per cent and 30 per cent and 20 per cent, respectively.

Q.11. That is right, 50 per cent immediately to the companies. A. 50 per cent to the companies, 30 per cent expenses.

Q.12. To the trustees for expenses. A. And 20 per cent to be returned to the policyholders.

Q.13. That is right, and, of course, you understood that if the 30 per cent was not all used in expenses that that would be returned to the companies? A. That was my understanding. That was my assumption.

Q.14. 20 per cent was all the policyholders obtained. Now, you had no objection to the terms of the settlement? A. No.

Q.15. As relates to your company? A. No.

(Photostatic copy of a check, handed to the reporter, was marked for identification as "Defendants' Exhibit 233, EFM.")

Q.16. (By Mr. Holman) Now, Mr. Luce, I hand you Defendants' Exhibit 233, and which I now introduce in evidence, and ask you if that is a check of your company to C. R. Street, Agent, for $2,186.72, dated March 24, 1936. A. It is.

(Which said Defendants' Exhibit 233, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

PROVIDENCE WASHINGTON
INSURANCE COMPANY.

No. 127038 Providence, R. I. MAR 21 1936 $21.84

Pay to the order of Providence Central National Bank 67-13

Fifty & 84/100 Dollars

Providence Washington Ins. Co.

VERIFIED BY EXACTY B2186 72 CTS.

D.H.B. Fletcher

Geo. E. Bixby Treasurer

FOR DEPOSIT TO THE CREDIT OF THE CITY NATIONAL BANK AND TRUST COMPANY

PAY TO THE ORDER OF ANY BANK, BANKER OR TRUST CO.

FEDERAL RESERVE BANK OF BOSTON 5-1

MAR 23 1936

5-1

D 233 521

Q.17. (By Mr. Holman) Will you explain just how that check happened to be issued? A. Late on the afternoon of this date I received a telephone call from Mr. Haid, whom I had known for a great many years, and in whom I had implicit faith, and the substance of the conversation was to the effect that he, Mr. Haid, was mailing to us a check for $4,000.00 and some dollars, which was about 11 per cent, and asked that we send him a check payable to C. R. Street as agent for this amount. It was late in the afternoon. I directed our treasurer to hand me a check, didn't even write a letter, put it in an envelop and mailed it to—

Q.18. (Interrupting) Did you make any memorandum of the conversation? A. All the memorandum I made was on a scratch pad when Mr. Haid was doing his telephoning, and if it is permissible to refer to a piece of paper in my own pocket—

Q.19. Yes, sir. A. Words to the effect that "I am sending you a check for $4,810.80, and I ask you to send us a check," as this check is drawn, "for $2,186.72," which we did, and the next morning we got the check for the $4,810.80, and he should have had our check. In other words, like the old book, it was a case of ships that pass in the night. The checks passed in the mail.

Q.20. Now, have you stated substantially all of the conversation you had with Mr. Haid at that time? A. Absolutely.

Q.21. Didn't he tell you for what reason he desired this check? A. No, sir.

Q.22. He didn't give you any reason at all? A. He did not, and I didn't ask him.

Q.23. Do you know how this was entered in the books of your company, against what expense or item? A. Without any question of a doubt, I think on one other sheet here it shows it was entered up as "legal expense, Missouri federal rate case."

Q.24. Did you direct your accountant to enter it in that way? A. Not particularly because he didn't need—

Q.25. (Interrupting) How did he happen to know how to enter it? A. When I asked him for the check, he, being somewhat familiar with Missouri and Street's name and Mr. Haid's name, I just told him that it must be assumed that it was for legal expense.

Q.26. Well, didn't the Subscribers' Actuarial Committee handle a lot of other matters for the companies besides the Missouri litigation? A. Oh, yes.

Q.27. Did Mr. Haid have anything to do with the Missouri litigation? A. Mr. Haid simply asked me—

Q.28. (Interrupting) I know, but up to that time had you ever had any communication from him? A. No, sir.

Q.29. Or ever heard of him having anything to do with the Missouri litigation? A. No, sir.

Q.30. Then what was there about Mr. Haid's name or Mr. Street's name as chairman of the committee that would cause either you or your accountant to enter that as legal expense? A. Implicit faith in Mr. Street's handling of every matter during the years we have known him in the insurance business.

Q.31. That doesn't answer my question. Possibly you are unable to answer it. If you can answer it, I wish you would do it. What was there about anything that transpired there or any name that was mentioned that would cause you or any other person to think that that was for the Missouri legal expense? A. I think I said in the beginning that he said that "we were returning you $4,810.80," which was 11 per cent of the impounded premiums.

Mr. Bullitt: Not "returning," "receiving."

Q.32. (By Mr. Holman) You have testified that in February you received a letter which set out the terms of this decree, which set out the 30 per cent went to the trustees to pay the expenses of this litigation, and then, now, one month later— A. (Interrupting) One year later, wasn't it?

Q.33. No, one month. A. Oh, I beg your pardon.

Q.34. In March, 1936, one month later they are asking for a 5 per cent check payable to Street which you think was for that purpose? A. Yes, sir.

Q.35. Now, didn't that seem strange to you? A. Not one iota considering the absolute faith I had in the manner in which Street always handled everything entrusted to him.

Q.36. But, as a matter of fact, you had no definite information whatever for what purpose this money was to be used, isn't that true? A. No definite information, no, sir.

Q.37. You didn't have any information, did you? A. No, sir.

Q.38. And your accountant didn't have any information, as far as you know? A. Not as far as I know except what I told him.

Q.39. You didn't give him any information? A. No.

Q.40. There was nothing on your memoranda that would give him that information? A. No.

Q.41. And if he put it down for Missouri legal expense, he got his information somewhere else or imagined it, isn't that true? A. Didn't I just say that I told him it must be Missouri litigation?

Q.42. Oh, I didn't understand that. I beg your pardon. Now, state that again? A. That when I asked Mr. Bixby for this check and he gave it to me, I told him it should be or must be entered as Missouri litigation, I assuming that is all it could be.

Q.43. Oh, I see. Then I beg your pardon. I didn't understand that. Well, now, you assumed that? A. Yes, sir.

Q.44. And that is why it went on your books in that way? A. Yes, sir.

Q.45. Why didn't you ask Mr. Haid what it was for? Wouldn't that have been simpler and more business-like? A. It may not be a direct answer, but, Mr. Attorney, I have found out since that your foresight is not as good as your hindsight.

Q.46. Is this the usual practice of your company to pay out funds without knowing what it is for just because some person asks for it? A. Much of our business is transacted on faith, faith in our agents, our adjusters, and our attorneys. Therefore, when Mr. Haid simply asked over the telephone to do as I have testified we did it.

Q.47. You did it and didn't question it? A. No, sir.

Q.48. All right. Did you ever at any time attend any meeting in New York or Hartford or elsewhere in which this Missouri litigation was discussed? A. No, sir.

Q.49. Did you ever make any effort to ascertain what this 5 per cent check went for? A. No, sir.

Q.50. Did you expect that at sometime or other you would receive that information? A. I had the fullest confidence that sooner or later a full accounting of the entire matter would be given to every company.

Q.51. Well, Mr. Street lived for almost two years after this check was drawn, didn't he? A. Yes.

Mr. Bullitt: Two years?

Mr. Holman: I say almost two years after it was drawn.

Q.52. (By Mr. Holman) Did he ever account to you for that money? A. No, sir.

Q.53. Did you ever ask him for an accounting? A. No, sir.

Q.54. Did anyone in your company, as far as you know, ever ask for it? A. No, sir.

Q.55. Why didn't you do it? A. I still had implicit faith that some day he would account for it.

Q.56. Well, the federal court cases had been completely settled up before Mr. Street's death.

Mr. Berger: Object to the form of the statement as not being a true statement of fact because the federal cases were not completely closed and settled up even in March of this year when the court made its present order of restitution. It will probably be another year before it will be settled up.

Mr. Murphy: No, they still had some of the money.

The Special Master: We will just argue about that for the rest of this hearing. You interpret it one way and he interprets it another. If you want the record to show what had been done in the federal court investigation, just introduce as much of the record as you need to do so. You will never agree with them and they will never agree with you about whether it was settled or not. You are thinking about different things.

Mr. Berger: I had it in my mind that the matter of returning the impounded funds in accordance with the decree of May, 1939, was not a completed job.

The Special Master: I know what you have in mind, and I know what he has in mind.

Q.57. (By Mr. Holman) You knew, did you not, that the 50 per cent had been returned to the companies or to your company? A. Yes, sir.

Q.58. And you knew that the 30 per cent had been paid to the trustees, did you not? A. They said it had been paid to the trustees.

Q.59. That was your information? A. Yes.

Q.60. And you knew that this 11 per cent dividend you might call it, came from that 30 per cent fund, did you not? A. I assumed so, yes, sir.

Q.61. That was the only money of your company that the trustees had up to that time? A. Up to that time, yes, sir.

Q.62. So you naturally assumed that that is where it came from? A. Yes, sir.

Q.63. All right, then Mr. Street collected as agent 5 per cent of the total amount of your impounded premiums and you never got any accounting and you never asked for it? A. No, sir.

Q.64. All right. That check designated Mr. Street as agent, whose agent? A. Our using the term "agent" is purely an impersonal affair, as I see it, and he might have called him chairman or trustee.

Q.65. He is bound to have been your agent, wasn't he?

Mr. Bullitt: That calls for a conclusion.

The Special Master: Did you have it in your mind what it meant when you wrote the check or not?

A. No, sir, simply because we were asked to write it that way.

Q.66. (By Mr. Holman) You just wrote it that way?

The Special Master: I think it is proper for you to find out whether he had anything in mind when he wrote the "agent," but so far as what "agent" could mean, my imagination is as broad as his, and it wouldn't do any good for him to give some hypothetical explanation.

Q.67. (By Mr. Holman) You definitely intended him to handle those funds? A. Yes.

Q.68. It was your money, your company's money? A. Yes.

Q.69. And you were willing for him to distribute it for what you thought was legal expense? A. I had that faith in him.

Q.70. To that extent he was acting as your agent, that is, you thought he was your agent? A. He was our disburser.

Q.71. All right. I think we understand each other on that. Now, have you told all that you know about this transaction? A. Absolutely

Q.72. I mean the Missouri litigation, the settlement of it and the settlement and collection of money? A. Yes, sir.

Q.73. You never talked to Mr. Street about it? A. Never.

Q.74. You never discussed it in any meeting or with any person except what you have detailed here? A. That is all.

Q.75. Where do you live? A. Providence.

Q.76. Providence, Rhode Island? A. Providence, Rhode Island.

Q.77. That is where your company is located? A. That is our home office.

Q.78. Did you hear any discussion of this meeting that was held in Hartford on May 3, 1935? A. No, sir.

Q.79. Did you know anything about that meeting? A. Never heard of it until it broke in the newspapers.

Q.80. I see. You have been in the hearing room here most all day, haven't you? A. Yes, sir.

Q.81. You have heard some testimony about it here? A. Yes.

Q.82. Have you talked to Mr. House about this matter? A. Mr. House is my superior officer and all through this Missouri litigation, or when items would appear in bulletins or in the newspapers, naturally, like you would talk to your chief, I have talked to him. If I may be allowed to explain to you, sir, Mr. Bixby is a man 83 years old who has been retired a year and a half. Mr. Fletcher is simply a chief accountant and he just signs the checks so that they have a verification.

Q.83. You say you had talked to Mr. House. Do you have any reason to believe that he knows any more or anything additional about this than you do? A. Absolutely not.

Q.84. You handled it for your company there in the office, did you not? A. Yes, sir.

Q.85. Mr. House got his information very likely, from you about the matter? A. From the newspapers, the bulletins and myself.

Q.86. Did he get any bulletins as far as you know that you haven't seen? A. No.

Q.87. And you say Mr. Fletcher is chief accountant? A. Mr. Fletcher is.

Q.88. As I understand it he only did what he was told in the nature of keeping books and things of that nature? A. Mr. Fletcher is what, perhaps, you might better call cashier. He verifies checks and he enters them up in the cash book, and the verification to Mr. Bixby or to myself or any other officer authorized to sign is just simply that safety that it agrees with the bill or whatever the item is and that it was so entered in the cash book.

Q.89. And Mr. Bixby merely signed and issued this check as you directed him to? A. Yes, sir.

Q.90. As far as you know, that is all he had to do with the matter itself or all he knows about it? A. That is all he knows.

Mr. Holman: We will not ask for them at this time.

Cross Examination by Mr. Bullitt.

XQ.91. When the ships passed in the night and you got a check for about $22,000.00— A. (Interrupting) No.

XQ.92. And sent a check— A. We sent a check.

XQ.93. When the ships passed in the night, 11 per cent was sent to you and you were sending the $2,186.72 check to Mr. Street, you were getting back 11 per cent of your impounded funds, weren't you? A. I so understand it.

XQ.94. And out of that you were returning 5 per cent to the person or one of the persons from whom you got the 11 per cent? A. Yes, sir.

XQ.95. You understood that was for some legal expense in connection with your being able to get your share of the impounded funds? A. I so assumed.

XQ.96. And you had already received about 50 per cent or nearly $22,000.00 out of that fund, and hadn't paid anything for that? A. May I look at this (indicating)?

XQ.97. Sure. A. We received—I just have a memorandum of the larger amounts. We received bonds in the par value of $20,000.00, a premium thereon of $493.75, and the accrued interest of $281.81, and at the same time that was all accompanied by a check from the custodian, $867.00.

XQ.98. A total of how much? A. It totals $21,-723.24.

XQ.99. Then you got the 11 per cent? A. On top of that.

XQ.100. On top of that and you sent back this— A. (Interrupting) 5 per cent.

XQ.101. This $2,186.72? A. Yes.

Mr. Bullitt: That is all.

(Witness excused.)

FRANK A. SCHLESINGER, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Mr. Schlesinger, where do you live? A. In Springfield, Massachusetts.

Q.2. What is your connection with the Springfield Fire and Marine Insurance Company group? A. I am treasurer of three companies and assistant treasurer of a non-resident subsidiary.

Q.3. This group consists of the Springfield Fire and Marine, the Michigan Fire and Marine, the New England, and the Sentinel Fire? A. Yes.

Q.4. Which is the foreign company? A. The Michigan Fire and Marine, as its name might indicate.

The Special Master: When you say "foreign," you don't mean foreign to the United States?

A. Detroit, Michigan.

The Special Master: You mean it doesn't have its home office where you have your home office?

A. Yes.

Q.5. (By Senator Hollingsworth) Does this group have a Western Department? A. Yes.

Q.6. Was your connection the same in 1935 and 1936? A. My official position?

Q.7. Yes. A. It has change since with the New England. I was elected treasurer of that company about two years ago.

Q.8. Who is president of the parent company, the Springfield Fire and Marine? A. Mr. George G. Bulkley.

Q.9. There has been some intimation that he is quite ill. A. He has been, under a doctor's care.

Senator Hollingsworth: Don't you have a certificate, Mr. Murphy.

Mr. Murphy: There is the doctor's certificate and an affidavit that he has made. You may use that if you wish.

Senator Hollingsworth: I would like to present, by consent, this doctor's certificate to the Master.

The Special Master: I would like—you are just trying to show the reason for not taking the witness' testimony, and show when the hearing is complete?

Senator Hollingsworth: Yes.

The Special Master: There is no objection to their showing it that way?

Mr. Bullitt: No, that is all right.

Senator Hollingsworth: May I read it into the record? It is very brief, or just have it marked as an exhibit?

The Special Master: Just mark it as an exhibit.

(Said doctor's certificate, handed to the reporter, was marked for identification as "Defendants' Exhibit 234, EFM.")

Senator Hollingsworth: I now offer in evidence Defendants' Exhibit 234.

(Which said Defendants' Exhibit 234, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 234.

Frederick B. Sweet, M.D.
146 Chestnut Street
'Springfield, Massachusetts

August 3, 1939.

Special Commissioner Paul V. Barnett,
Hotel Bond,
Hartford, Connecticut.

My dear Mr. Barnett:

This is to certify that George G. Bulkley of this City was recently operated by me. He is convalescent but is in no condition to appear in your Court.

Respectfully yours,
(Signed) Frederick B. Sweet"

Senator Hollingsworth: This statement shows that he has been operated on and is convalescent and is not able to attend the trial.

The Special Master: All right.

Senator Hollingsworth: I have also been presented with an affidavit signed by Mr. Bulkley as to his knowledge. By consent, may this affidavit of Mr. Bulkley's be placed in the record as his testimony in this case?

Mr. Murphy: Yes.

Senator Hollingsworth: Given in affidavit form because of his disability.

Mr. Murphy: Yes.

Senator Hollingsworth: For whatever value it may be.

The Special Master: It is offered in evidence?

Senator Hollingsworth: I haven't had it marked. I believe I should have it marked.

(Said affidavit, handed to the reporter, was marked for identification as "Defendants' Exhibit 235, EFM.")

Senator Hollingsworth: I now offer in evidence Defendants' Exhibit 235.

(Which said Defendants' Exhibit 235, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 235.

The Springfield Group Of Fire Insurance Companies
Springfield Fire & Marine Insurance Company,
Springfield, Massachusetts,
Constitution Department, Springfield, Massachusetts
Sentinel Fire Insurance Company, Springfield,
Massachusetts
Michigan Fire & Marine Insurance Company,
Detroit, Michigan
New England Fire Insurance Company,
Pittsfield, Massachusetts
George G. Bulkley, President
Springfield, Massachusetts
August 3, 1939

Special Commissioner Paul V. Barnett,
c/o Hotel Bond,
Hartford, Connecticut

Missouri Rate Litigation

This is to certify that I have a general knowledge of the above-captioned subject, details in connection with which, however, with the exception of the following, have all been handled by the Chicago office of the Springfield Fire & Marine Insurance Company Group.

On March 23, 1936 I received a telephone message from Paul L. Haid, President of the Insurance Executives Association. He told me that there was to be made a distribution from the 30% Trusteed Funds held by Trustees R. G. Folonie and Charles R. Street and that we would receive from Mr. Street a check for $34,807.36, representing 11% of the Missouri impounded premiums of the Springfield Group. He requested that I have mailed to Charles R. Street, Agent, a check for $15,821.52, representing 5% of the Springfield Group's impounded premiums.

I asked Mr. Haid the reason for the 5% payment, and he stated he understood it was for legal and other expenses. I told him that we would require a voucher in connection with the payment, and he stated that this would come forward from Mr. Street. Thereupon I instructed our Treasurer, Mr. F. A. Schlesinger, to have a check issued for $15,821.52 payable to C. R. Street, Agent,

representing 5% of our impounded premiums. This instruction was carried out. Shortly afterwards we received from Mr. Street a voucher indicating that the payment was on account of Missouri litigation expense.

(Signed) Geo. G. Bulkley
President

Commonwealth of Massachusetts Hampden ss.

Personally appeared before me Geo. G. Bulkley and made oath that the foregoing statement is true.

(Signed) Charles M. Heidel
Notary Public

(Seal)
August 3, 1939
My commission expires February 23, 1940"

Q.10. (By Senator Hollingsworth) Mr. Schlesinger, you became advised that a compromise of the Missouri rate litigation had been effected in May of 1935, did you not? A. I had knowledge of the transaction.

Q.11. That is what I mean. You had general knowledge that a compromise had been made? A. Yes.

Q.12. Then in 1936, I believe in February, a federal court decree was entered based upon that compromise, you recall that? A. Well, I had knowledge of that, also.

Q.13. Did you receive from the Actuarial Committee a detailed statement of the nature of an official circular setting out the terms of that compromise? A. I believe the company received one.

Q.14. And it reached you, did it? A. I have forgotten whether I saw the circular itself or saw a reference to it in the press.

Q.15. You knew that 30 per cent was allocated for the purpose of payment of expenses of the litigation? A. Yes.

Q.16. And that it was in the hands of Street and Folonie as trustees? A. Yes.

Q.17. Did you ever hear prior to this year of a $100,000.00 fund or fund approximating that amount being raised in connection with this litigation? A. No.

Q.18. When was your first information concerning that? A. When I saw it in the Journal of Commerce last week.

Q.19. Now, in March of 1936 your company received a 11 per cent disbursement out of this impounded premiums, did it not? A. Yes.

Q.20. Did that check come to you personally, I mean to your personal attention? A. It came to my desk.

Q.21. In the mail? A. I couldn't say whether it came through the regular channel of the mailing department or whether it came via our office messenger from the president's office.

Q.22. At about that same time were you instructed to issue a check for 5 per cent of these premiums? A. Well, prior to that time I was.

Q.23. Before your check had actually come? A. Yes.

Q.24. Before you received the 11 per cent? A. Prior to that time I had been.

Q.25. Do you know how long it was before you received the 11 per cent check that you got instructions to write a 5 per cent check? A. Well, I say within two or three days.

Q.26. Who gave you those instructions? A. President Bulkley.

Q.27. Were those instructions written or verbal? A. They were verbal.

Q.28. What instructions did he give you? A. He instructed me to cause a check to be issued, payable to Mr. Street as agent, for the 5 per cent proportion of our impounded premiums.

Q.29. Were you advised by him as to the purpose of this check? A. Yes.

Q.30. What information did you receive from him? A. He said it was for legal expenses in connection with the Missouri rate case.

Q.31. Was there any discussion between you and Mr. Bulkley at that time as to why you would be called upon for paying legal expenses? A. No, there wasn't. I thought it was a pretty good trade.

Q.32. You mean with relation to finance? A. Of dollars and cents, yes.

Q.33. But you knew that 30 per cent of your impounded premium totalling $316,000.00, or substantially $105,000.00, had been allocated for the payment of expenses, didn't you? A. I knew that 30 per cent had.

Q.34. And you had $316,000.00? A. Yes, but I didn't know that the money had been paid out, sir.

Q.35. I know, but you knew it was in the hands of trustees for that purpose, didn't you? A. I had general knowledge of the 50, 30 and 20 per cent.

Q.36. And the natural assumption was that when they sent you 11 per cent, of course, you knew that came out of the 30 per cent? A. I wasn't sure.

Q.37. You weren't sure? A. No. I only had general knowledge of this case from its inception right through to its conclusion, anyway.

Q.38. Well, is it true that on or about March 23rd, Mr. Bulkley told you that Mr. Haid had told him that there was to be made a distribution from the 30 per cent trustees' fund held by trustees, R. J. Folonie and Charles R. Street? Did Mr. Bulkley tell you that? A. Yes.

Q.39. Then you did know it came out of the 30 per cent? A. Well, as a matter of fact, I didn't know whether it was coming from the 30 per cent or not.

Q.40. Did Mr. Bulkley tell you that? A. Well, I am not sure. He mentioned the 11 per cent and he mentioned the 5 per cent.

Q.41. Well, you had already gotten your 50 per cent, hadn't you? A. In securities.

Q.42. Yes. A. Well, I don't know the exact date that those were received. I didn't happen to be at the office.

Q.43. Well, you knew they had been received at the time you got this? A. I couldn't place the sequence of the receipt of the securities with this check.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 236, 237 and 238, EFM.")

Q.44. Now, your company has a Western Department? A. Yes.

Q.45. Prior to the time of this compromise, the litigation had been handled out of the Western Department, hadn't it? A. The details had, yes.

Q.46. You had had no connection with the case at all? A. No.

Q.47. And Mr. Haid hadn't been known to you in the case at all? A. No.

Q.48. You had no communication with him whatever? A. No.

Q.49. You knew that the Actuarial Committee was handling it for your company? A. Well, I don't know as I can answer that question. I had seen the circulars from them from time to time, but I wouldn't receive them in my official duties at the head office of the company. Does that answer your question?

(Photostatic copy of check, handed to the reporter, was marked for identification as "Defendants' Exhibit 239, EFM.")

Q.50. I show you Defendants' Exhibit 236, which purports to be a copy of a letter written by you on March 23rd to Mr. Haid. A. Yes, sir, it does appear to be.

Q.51. Now, at that time you stated that you were sending the check, "our proportion of the expenses in connection with the Missouri Rate Case litigation." You didn't know at that time it was even legal expense, did you? A. I know what the president told me.

Q.52. All right. A. I wasn't supposed to know, was I?

Q.53. I wouldn't know. Did he tell you? A. Yes, haven't I testified to that effect?

The Special Master: Let me suggest, Mr. Witness, you pass on that yourself and don't leave it to any attorney.

Q.54. (By Senator Hollingsworth) Now, I show you Defendants' Exhibit 237. Whose handwriting is that in? A. I couldn't say.

Q.55. Do you know the handwriting of Paul Haid? A. No, I don't. That is what accompanies the four checks, to my desk. There is my handwriting right there (indicating).

Q.56. At the time you wrote Mr. Haid that letter, did you send him Defendants' Exhibit 239? A. Yes.

Mr. Berger: That is the check?

A. Yes, sir.

Q.57. (By Senator Hollingsworth) And in your letter transmitting that you asked for a receipt, did you not? A. Yes.

Q.58. Did you get a receipt? A. Yes.

Q.59. From Mr. Haid or anyone else? A. We have a receipt signed by Mr. Street, Agent. There it is, a photostatic copy.

(Said photostatic copy of receipt, handed to the reporter was marked for identification as "Defendants' Exhibit 240, EFM.")

Q.60. I hand you Defendants' Exhibit 240. Is that the receipt that you received from Mr. C. R. Street, Agent? A. That is a photostat of it.

Q.61. That is what I mean, a photostat of it. That is dated March 31, 1936. Now, I show you Defendants' Exhibit 238, which also has been marked Defendants' Exhibit 63. That is a letter addressed to Mr. John C.

Harding, dated March 24, 1936, and he was the vice-president of your Springfield Fire and Marine Insurance Company? A. Yes, sir.

Q.62. And Western Manager? A. Yes.

Q.63. I call your attention to the last paragraph, "We would be interested in being advised regarding the transactions referred to herein." That is those checks, isn't it, "at your convenience, and also enlightened as to what, if anything, may be expected in the future." Now, at that time did you know the purpose of that check that you had received, or that you had been called upon to deliver? A. The purpose of it?

Q.64. Yes. A. Well, yes.

Q.65. Well, if so— A. (Interrupting) It was for legal expenses.

Q.66. If so, why did you ask him, your manager, to advise you what it was about? A. I didn't ask him to advise us what that check was about.

Q.67. Regarding the transactions referred to here? A. I refer to several transactions. What I had particularly in mind was to inquire whether he had anything more coming. You see, we had other funds impounded out there and I gained the impression after my return to the office after the receipt of these securities that we were going to get some more bonds.

Q.68. Let me call your attention to this letter, the second paragraph. You recited about the receipt of the "telephone conversation from Mr. Haid indicating that checks were in the mail to us for a payment in cash on account of our impounded premiums (11%), and requested that we forward him a remittance at once for 5% of the impounded premiums to apply on expenses." A. Yes.

Q.69. You recite that you accordingly mailed it and you say you have received the checks? A. Yes.

Q.70. "The only thing that accompanied these checks was a memo as follows, written in longhand:

'Total Impounded Premium

11% checks herewith

5% Impounded Premiums

Check payable to C. R. Street, *Agent* to be sent here.'

We charged the remittance to our contra account, and would suggest that you reimburse us with your check." Now, when you said, "We would be interested in being advised regarding the transactions referred to herein," weren't you interested in finding out what it was all

about and wasn't that what you meant in all fairness in that letter? A. No, sir, I don't think so.

Q.71. Now, I show you Defendants' Exhibit 62, which purports to be a letter from Mr. Hobart. Who is Mr. Hobart? A. He is our auditor at the Chicago office.

Q.72. And that letter of March 26th is in answer to your letter of March 24th, isn't it? A. Yes.

Q.73. Now, I notice in that letter it says this: "As far as check for $15,821.52." Now, that is the 5 per cent, isn't it? A. Well, I will compare it.

Q.74. Here it is. A. With your permission with the check. Yes, sir.

Q.75. "As far as check for $15,821.52 is concerned we will advise you later after we get in touch with Mr. Street." You still didn't know that it was chargeable to legal expenses, did you? "Presumably it will be charged as a separate disbursement item with the caption 'Expenses in connection with the Missouri Rate Case.'"

The Special Master: If you are not going to let him answer the questions there is no use in asking them. Read him the question and let him answer it.

(Question read.)

A. I was instructed by our president it was for legal expenses.

Q.76. (By Senator Hollingsworth) If so, why were you writing your Western Department to find out what it was for? A. I didn't write them to find out what it was for.

Q.77. Well, Mr. Hobart so understood your letter, didn't he? A. I couldn't gain that interpretation.

The Special Master: The important thing is, what did he mean by it? The way Mr. Hobart interpreted it is of small consequence.

A. What I meant, your Honor, in asking the Western Department to be advised was particularly about the bonds, also about the further funds that were impounded and what disposition was to be made of these, also about the receipt, thinking the receipt probably would come from Chicago.

Mr. Bullitt: After all, those letters speak for themselves, if your Honor please.

The Special Master: If there is any ambiguity as to them he can answer. His understanding couldn't possibly be controlled by the way Mr. Hobart interpreted it.

Mr. Bullitt: Of course, if there is some expression in his letter that he wants to ask him what he referred to.

The Special Master: Well, he has answered that.

Mr. Bullitt: He says to all of them.

Mr. Berger: Mr. Hobart has also testified in regard to that particular letter.

The Special Master: Well, I know, but I don't thnk what was in this man's mind could possibly be controlled by Mr. Hobart's answer as to what interpretation he put on it.

Mr. Bullitt: Isn't he the one who said he did what the president told him because if he questioned them they might get another vice-president?

Q.78. (By Senator Hollingsworth) Now, I will call your attention to this: "As far as check for $15,821.52 is concerned we will advise you later after we get in touch with Mr. Street." Did he advise you later? A. I have no knowledge of having seen anything. I understand the accounting had not been completed.

Q.79. Well, I call your attention then, "after we get in touch with Mr. Street." Were you advised later, that they ever got in touch with Mr. Street? A. Have I got in touch?

Q.80. Were you advised that anyone ever did? A. No.

Senator Hollingsworth: I offer in evidence Defendants' Exhibits 236, 237, 238, 239 and 240.

(Which said Defendants' Exhibits 236, 237, 239 and 240, so offered in evidence, having been previously duly marked, are in words and figures as follows, and Defendants' Exhibit 238, having been previously offered as Defendants' Exhibit 63 and set out at page 294 of this record, is not here recopied:)

March 23, 1936

Paul L. Haid,
Insurance Executive Association,
John Street,
York, N. Y.

Sir:

At the suggestion of President Bulkley, I am
sed to enclose this Company's check payable to
. Street, Agent in amount of $15,821.52 represent-
our proportion of the expenses in connection with
Missouri Rate Case litigation.

Will you kindly see that a receipt is furnished
or our files which is a requirement of the Laws of
State as well as our auditors.

Very truly yours,

Treasurer

MCH:l
losure

D 1936

Total unpaid prems. 31643a ~~5~~ ✓

11% Checks returned to Ohio Casualty → 3480 7.36 ✓

5% unpaid prems. 1582 1.52 ✓

Check payable to C. R. Street Agent to be sent here

316.430.51
31.643.05
348.073.56

RECEIVED
MAR 24 1936
Ans'd

D 237

540

541

PAYABLE AT PAR IN NEW YORK FUNDS AT THE CENTRAL HANOVER BANK AND TRUST COMPANY, NEW YORK, N. Y. 1-66

Springfield Fire & Marine Insurance Company

Springfield, Mass. March 23, 1936 No. 54378

Pay $15821 and 52 cts Dollars

$ 15,821.52

in full settlement of Missouri Rate Case

Springfield Fire & Marine Insurance Co.

TO THE ORDER OF C. R. Street, Agent

TO THE THIRD NATIONAL BANK AND TRUST COMPANY
SPRINGFIELD, MASSACHUSETTS

BY ENDORSEMENT BELOW ACKNOWLEDGE RECEIPT OF PAYMENT AS INDICATED ON FACE OF THIS CHECK.

DEPOSIT WITH NATIONAL BANK TRUST COMPANY CHICAGO

RECEIVED PAYMENT THROUGH NEW YORK CLEARING HOUSE

MAR 26 1936

CHASE NATIONAL BANK
NEW YORK
No. 7

542

WESTERN DEPARTMENT
310 SOUTH MICHIGAN AVENUE
POST OFFICE BOX 750
CHICAGO

Great American Insurance Company New York

C.R. STREET
Vice President
G.S. GREGORY
Secretary

(2)

CHICAGO March 31, 1904.

Dear Mr. Bulkley:

I acknowledge the receipt of your check for $15,621.52, account Missouri litigation expense.

Yours very truly,

C R Street
Agent

Mr. George G. Bulkley, President,
Springfield Fire & Marine Insurance Co.,
195 State Street,
Springfield, Mass.

L 240

Senator Hollingsworth: I think that is all.
Mr. Bullitt: That is all.
(Witness excused.)